

**Stipulation as to the Reports of The Wabash Railroad Company
and the Chicago, Milwaukee & St. Paul Railway Company
to the Interstate Commerce Commission, filed Octo-
ber 19, 1912.**

2 In the District Court of the United States for the
Southern District of Iowa, Central Division.

The Chicago, Milwaukee & St. Paul Railway Company, and
The Wabash Railroad Company, Complainants,

vs.

The Des Moines Union Railway Company, Frederick M. Hub-
bell, Frederick C. Hubbell and F. M. Hubbell & Son,
Defendants.

Stipulation as to Reports of The Wabash Railroad Company
and the Chicago, Milwaukee & St. Paul Railway Com-
pany to the Interstate Commerce Commission.

It is hereby stipulated and agreed by the parties in the
above entitled cause:

1. That the complainants herein have each, as required by
law, filed certain annual reports with the Interstate Com-
merce Commission for the years ending June 30, 1898, 1899,
1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, and
for other years. That each of said reports was duly signed
and sworn to by the president or other chief officer, and by
the treasurer or other officer in charge of the accounts of
the company making the report, before a person duly author-
ized to administer oaths. That the verification of each of said
reports was in substantially the following form:

State of

County of—ss.

We, the undersigned, President,
and of the
Company, on our oath do severally say that the foregoing re-
turn has been prepared, under our direction, from the

3 original books, papers, and records of said Company;
that we have carefully examined the same, and declare
the same to be a complete and correct statement of the busi-
ness and affairs of said Company in respect to each and every
matter and thing therein set forth, to the best of our knowl-
edge, information and belief; and we further say that no de-
ductions were made before stating the gross earnings or re-
ceipts herein set forth; except those shown in the foregoing

accounts; and that the accounts and figures contained in the foregoing return embrace all of the financial operations of said company during the period for which said return is made.

.....
President.
(or other chief officer)

.....
Treasurer.
(or other officer in
charge of the accounts)

Subscribed and sworn to before me this day of,
19...

.....
.....

2. That said reports, among other things show:

On page 36 of each of said annual reports so filed for the years ending June 30, 1898, June 30, 1899, June 30, 1900, June 30, 1901, June 30, 1902, and June 30, 1903, there appears the following:

"Instructions for Answering Questions on Opposite Page.

* * * * *

State in table 'A' the names of all railway stocks owned, and in table 'B' the names of all stocks owned other than railway stocks, whether yielding an income from dividends or not, and the par value of same. For the dividend paying stocks, give the amount of dividends or income received from the same during the year. The 'Grand Total' of income here shown should be carried to 'Income Account', page 31 (or 33), after deducting the expenses, if any, attending the same.

Under 'Valuation' give the value at which the stocks specified are carried into the 'General Balance Sheet' against the item 'Stocks Owned' on page 49.

* * * * *

In case any changes in the amount of stocks owned have occurred during the year covered by this report, a full explanation of such changes should be given on page 53."

4 3. On the opposite page in each of said reports, being page 37, there appears a list of the corporations in which the Company making such report, owned stock, the par value of the stock so owned by it, the dividend thereon received during the last year and the cost of said stock.

4. The name of the Des Moines Union Railway does not appear in this list in any of said reports so filed by The Wabash Railroad Company for the said years ending June 30, 1899, June 30, 1900, June 30, 1901, June 30, 1902 and June 30, 1903.

5. The name of the Des Moines Union Railway Company does not appear in this list in the reports so filed by the said Chicago, Milwaukee & St. Paul Railway Company for the years ending June 30, 1898 and June 30, 1899.

6. In each of the reports so filed by the Chicago, Milwaukee & St. Paul Railway Company for the years ending June 30, 1900, June 30, 1901, June 30, 1902 and June 30, 1903, there appears the following entry on page 37:

"Stocks Owned.
A. Railway Stocks.

Name	Total Par Value	Rate	Income or divi- dend received,	Valuation
Des Moines Union Ry. Co.	100,000.00			1000.00"

7. On page 36 of each of the said annual reports so filed by The Wabash Railroad Company, and on the same page of the similar reports so filed by the Chicago, Milwaukee & St. Paul Railway Company, for the years ending June 30, 1904, June 30, 1905, June 30, 1906 and June 30, 1907, there appears the following:

"Instructions for Answering Questions on Opposite Page.

* * * * *

State in table 'A' the names of all railway stocks owned (including as such the stocks of railway bridge companies, and depot, station or terminal companies that are directly involved in the business of steam railway transportation), and in table 'B' the names of all stocks owned other than railway stocks, whether yielding an income from dividends or not, and the par value of same. For the dividend paying stocks, give the amount of dividends or income received from the same during the year. The 'Grand Total' of income here shown should be carried to 'Income Account' page 31 (33) after deducting the expenses, if any, attending the same.

Under 'Valuation' give the value at which the stocks specified are carried into the 'General Balance Sheet' against the item 'Stocks Owned' on page 49.

* * * * *

In case any changes in the amount of stocks owned have occurred during the year covered by this report, a full explanation of such changes should be given on page 53."

8. On the opposite page, being page 37, there appears in each of said reports a list of the corporations in which the company making the report owned stock, the par value of the stock so owned by it, the dividend thereon, received during the last year and the cost of said stock.

The name of the Des Moines Union Railway Company does not appear in this list in the report so filed by the Wabash Railroad Company for the year ending June 30, 1904.

9. In each of the said reports so filed by the Wabash Railroad Company for the years ending June 30, 1905, June 30, 1906 and June 30, 1907, the following items appear on the said opposite page, being page 37 of said reports.

"STOCKS OWNED
A. RAILWAY STOCKS.

Name	Total par value	Rate	Income or divi- dend received	Cost
Des Moines Union Rail- way Company	\$50,000.00			\$1.00
Des Moines & St. Louis Railroad Company	\$2,000,000.00			1.00"

6 10. On page 37 of each of the similar reports so filed by the Chicago, Milwaukee & St. Paul Railway Company for the same years ending June 30, 1904, 1905, 1906 and 1907 respectively, there appears the following entry:

"STOCKS OWNED.
A. Railway Stocks.

Name	Total par value	Rate	Income or divi- dend received	Valuation
Des Moines Union Rail- way Company	\$100,000.00			\$1,000.00"

11. On page 48 of each of the said annual reports so filed by The Wabash Railroad Company for the years ending June 30, 1908, and June 30, 1909, and on the same page of the similar reports filed by the Chicago, Milwaukee & St. Paul Railway Company for the same years appears the following:

"Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page entries or notations sufficient to show that no question or item has been overlooked. The word 'none' may be used wherever applicable. If returns are not made as required, some reference, as 'see page 48' should be made to this page, on which a brief statement of the reason for the variation or omission should be given.

In the table on the opposite page should be entered all stocks owned of active railway corporations (including as such, the stocks of railway bridge companies, and depot, station, switching, or terminal companies that are directly involved in the business of steam railway transportation. An active corporation is one which either operates railway property or maintains an organization for the purpose of distributing income.

All stocks owned by respondent are to be reported, whether they are free assets or are pledged for the issue of other securities; but the two classes should be entered separately in their appropriate columns as 'Unpledged' or 'Pledged'. The securities shown as 'Pledged' should also appear in the last column on page 31.

For the dividend-paying stocks give the amounts of dividends declared on the same during the year, except that no income should be shown for 'Stocks of respondent corporation.' The total of income here shown, when added to the corresponding total on page 57, should be carried to the Income Account and entered against 'Dividends declared on stocks owned or controlled.'

If stocks have been sold during the year covered by this report any dividends accruing on them during the time they were held, as also the rate of accrual, should be entered on the opposite page, but the par value need not be given.

There should also be entered all dividends accruing on stocks controlled but not owned, by the respondent corporation.

Under 'Valuation' give the value at which the stocks specified are carried into the General Balance Sheet against the item 'stocks owned' on page 83.

Separate entries under the appropriate headings should be made for (1) 'Stocks of respondent corporation' the par value of which should correspond with the entry in the column 'In treasury' under 'Total par value held by respondent corporation' on page 21; (2) 'Stocks of corporations whose property forms a part of the system of respondent corporation', which

should include all stocks owned of active railway corporations whose mileage is included on page 13 or in the upper table on page 15C; and (3) 'Stocks of corporations whose property does not form a part of the system of respondent corporation', which should include stocks owned of all other active railway corporations.

In case any changes in amount of stocks owned have occurred during the year covered by this report, a full explanation of such changes should be given on page 87."

12. On the following page, being page 49 of each of the said reports, filed by The Wabash Railroad Company for the years ending June 30, 1908, and June 30, 1909, the following entry appears:

"RAILWAY STOCKS OWNED

1. Active Corporations.

Stocks of Corporations whose property does not form a part of the Operating System of Respondent Corporation.	Par value of stocks owned not held in sinking or other funds.		Dividends declared		Valuation of stock owned
	Unpledged	Pledged	Rate	Amt.	
Des Moines Union Ry. Co.		\$50000.	None		1.00

13. On same 49 of the similar reports filed by the Chicago Milwaukee & St. Paul Railway Company for the year ending June 30, 1908, there appears the following:

"RAILWAY STOCKS OWNED.

1. Active Corporations.

Stocks of corporations whose property does not form a part of the operating system of respondent corporation.	Par value of stocks owned not held in sinking or other funds.		Dividends declared.		Valuation of stocks owned.
	Unpledged	Pledged	Rate	Amount	
Des Moines Union Railway Company	100,000.00				1,000.00"

14. On page 49 of the similar report filed by the Chicago, Milwaukee & St. Paul Railway Company for the year ending June 30, 1909, appears the following entry:

"RAILWAY STOCKS OWNED.

1. Active Corporations.

Stocks of corporations whose property does not form a part of the operating system of respondent corporation.	Par value of stocks owned not held in sinking or other funds.		Dividend declared		Valuation of stocks owned.
	Unpledged	Pledged	Rate	Amt.	
Des Moines Union Railway Company	100,000.00				100,000.00

15. On page 8 of each of the annual reports so filed by each of the complainants for the years ending June 30, 1898, and June 30, 1899, there appears the following:

"Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word 'None' may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases,

9 refer by note to this page, as for example, 'See page 8', where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The mileage to be returned on the opposite page is the mileage, the operations of which are in the 'Income Account', as returned on page 31 of this report. Should operations on any part of the mileage have been begun within the twelve months covered by this report, a full statement of facts should be furnished.

In giving the mileage, name the roads according to the classification and in the order indicated, and state the actual distance between terminals, single track, entering in the last column but one the mileage for each strip of road named, and in the last column the 'Miles of line for each class of roads named.'

Under 'B' of this table, the 'Spurs' referred to should include only those used for traffic purposes, as for example, a spur running from main line to a quarry or factory. Spurs in the nature of sidings should be entered only on page 67, against the item 'Miles of yard track and sidings,' under table 'A'.

By 'Line operated under trackage rights' is meant such lines as are used in common with other companies by the

company making report, but not owned by such company. Such lines constitute part of the line operated, but form no part of the property of the operating company. Roadway held in joint ownership may also be returned under this head, or the proportion of roadway so owned may be returned under 'Main line' owned; but in either case full explanation must be given in order to avoid duplication of line.

In case any changes have taken place during the year covered by this report, either in the classification of line as given on opposite page, or in the length of line reported, such changes should be explained in full on page 53.'

16. On the opposite page, being page 9 of each of said reports there appears the following printed heading:

"Property Operated.

(For roads making operating reports.)

Name of Every Railroad the Operations of Which are Included
in the Income Account—Page 31.

In giving roads below, observe the following classification and order;

- | | |
|---|--|
| <p>1. Railroad Line represented by capital stock:</p> <p style="margin-left: 20px;">A. Main Line</p> <p style="margin-left: 20px;">B. Branches and Spurs.</p> <p style="margin-left: 20px;">(See "Instructions" page 8).</p> <p>2. Proprietary Companies whose entire Capital Stock is owned by this Company.</p> | <p>3. Line Operated under Lease for specified sum.</p> <p>4. Line Operated under Contract, or where the rent is contingent upon earnings or other considerations.</p> <p>5. Line Operated under Trackage Rights.</p> |
|---|--|
-

17. In each of said reports below this heading appears what purports to be a list of all the railroads owned, leased or operated under joint trackage arrangement by the Company making the report (or owned by the Purchasing Committee in the said Wabash Railroad Company's report).

The Des Moines Union Railway Company does not appear on this list in any of said reports.

On the said page of the said report of The Wabash Railroad Company for the year 1899 the following appears;

"Lines Belonging to Purchasing Committee:

Des Moines & St. Louis, R. R. Harvey,—Des Moines, 43.4 miles"

18. On page 8 of each of the said annual reports so filed by The Wabash Railroad Company for the years ending June 30, 1900, June 30, 1901, June 30, 1902, and June 30, 1903, respectively, and also on each of the like reports so filed by the Chicago, Milwaukee & St. Paul Railway Company for the same years there appears the following:

"Instructions for Answering Questions on
Opposite Page.

* * * * *

The mileage to be returned on the opposite pages is the mileage, the operations of which are in the 'Income Account', as returned on page 31 of this report.

The statement should be made of the facts as they existed at the end of the year, or of any shorter period for which operating returns are made. If the operation of any part of the mileage so reported was begun within the period for which returns are made, an explanation of the fact should be given.

* * * * *

In giving the mileage, name the roads according to the classification, and in the order indicated, and state the actual distance between terminals, single track entering in the last ~~named~~ column but one the mileage for each strip of road named, and in the last column the 'Miles of line for each class of roads named.'

Under 'B' of this table 'Spurs' referred to should include only those used for traffic purposes, as for example, a spur running from main line to a quarry or factory. Spurs in the nature of sidings should be entered only on page 67, against the item 'Miles of yard track and sidings' under table 'A'.

11 By 'Line operated under trackage rights' is meant such lines as are used in common with other companies by the company making report, but not owned by such company. Such lines constitute part of the line operated, but form no part of the property of the operating company. Roadway held in joint ownership may also be returned under this head, or the proportion of roadway so owned may be returned under 'Main line' owned,; but in either case full explanation must be given in order to avoid duplication of line.

In case any changes have taken place during the year covered by this report, either in the classification of line as given

on opposite page, or in the length of line reported, such changes should be explained in full on page 53."

19. On the opposite page of each of said reports, being page 9 of said reports, there appears the following heading:

"Property Operated.

(For Roads Making Operating Reports.)

Name of Every Railroad the Operations of Which are Included in the Income Account—Page 31.

In giving roads below, observe the following classification and order,

1. Railroad Line represented by capital stock: 3. Line Operated under lease for specified sum.

A. Main Line

B. Branches and Spurs.

(See 'Instructions' page 8).

2. Proprietary Companies whose entire Capital Stock is owned by this Company.

4. Line Operated under Contract, or where the rent is contingent upon earnings or other considerations.

5. Line Operated under Trackage Rights.

followed by a list of railroads owned, leased, or operated under joint trackage arrangements by the Company making the report; showing the terminals, miles operated in each state, and total mileage of such railroad.

The name of the Des Moines Union Railway Company does not appear in this list in any of the said reports so filed by The Wabash Railroad Company for the years ending June 30, 1900, June 30, 1901 and June 30, 1902.

20. On page 9 of the report so filed by The Wabash Railroad Company for the year ending June 30, 1903, the following entry appears on this list:

12

Lines operated under joint trackage arrangements	Terminals		Miles of line for each road named.
	From	To	
Des Moines Union Railway Company	Chesterfield	Des Moines	2.4

21. On page 9 of each of the said reports so filed by the Chicago, Milwaukee & St. Paul Railway Company for the years ending June 30, 1900, June 30, 1901, June 30, 1902, and June 30, 1903, under said heading the following entry appears:

"Question #5.

Des Moines Union Ry.	Des Moines	1.72"
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22. On page 8 of each of the said annual reports so filed by The Wabash Railroad Company for the years ending June 30, 1904, June 30, 1905, June 30, 1906 and June 30, 1907, and also on the same page of each of the like reports so filed by the Chicago, Milwaukee & St. Paul Railway Company for the same years there appears the following:

"Instructions for Answering Questions on Opposite Page.

* * * * *

The mileage to be returned on the opposite page is the mileage, the operations of which are in the 'Income Account' as returned on page 31 of this report.

* * * * *

In giving the mileage, name the roads according to the classification and in the order indicated, and state the actual distance between terminals, single track, entering in the last column but one the mileage for each strip of road named, and in the last column the 'Miles of line for each class of roads named'.

* * * * *

By 'Line operated under trackage rights' is meant such lines as are used in common with other companies by the company making report, but not owned by such company. Such lines constitute part of the line operated, but form no part of the property of the operating company. Roadway held in joint ownership may also be returned under this head, or the proportion of roadway so owned may be returned under 'Main line' owned; but in either case a full explanation must be given in order to avoid duplication of line.

* * * * *

23. On the opposite page, being page 9 of each of said reports, there appears the following heading:

13

"Road Operated.

Name of every Railway Company the operations of which are indicated in this report.

In giving Roads below, observe the following classification and order."

And under this heading in each of said reports so filed by The Wabash Railroad Company for said years there appears the following entry.

"3. Lines operated under trackage rights.	TERMINALS		Miles of line for each road named.
	From	To	
Des Moines Union Ry. Co.	Chesterfield	Des Moines	2.4 "

24. Under this heading in each of the said reports so filed by the Chicago, Milwaukee & St. Paul Railway Company for said years, appears the following entry:

"Question 3.

Des Moines Union Ry. Des Moines 1.72"

25. On page 12 of each of the said annual reports so filed by The Wabash Railroad Company for the years ending June 30, 1908 and June 30, 1909, respectively, and also on the same page of the like report filed by the Chicago, Milwaukee & St. Paul Railway Company for the years ending June 30, 1908 and June 30, 1909, there appears the following:

"Instructions for Answering Questions on Opposite Page.

• • • • •

The mileage to be returned on the opposite page is the single track mileage, the operations of which are included in the 'Income Account' as returned on page 39 of this report.

• • • • •

In giving the mileage, name the roads according to the classification and in the order indicated, and state the actual single track distance between termini, entering in the last column but one the mileage for each strip of road named, and in the last column the total mileage of each class.

• • • • •

Class 1 should include all line operated which the respondent corporation owns in fee.

14 Class 2 should cover line which has been practically absorbed or joined for operating purposes to the property of the respondent carrier, the title to which is vested in some other corporation, active or inactive, whose capital stock

wholly or in a majority is owned by the respondent carrier. It should be kept clearly in mind that in many cases inactive corporations, although virtually absorbed by the controlling corporations, still retain the titles to ownership, and in such cases the roads should be reported under Class 2. From this class should be excluded all line operated under lease or contract, even though a majority of the stock is owned by respondent.

Class 3 is intended to cover all roads operated under lease, whether or not the lesser companies maintain independent organizations for the purpose of distributing income.

By 'Line operated [under] trackage rights' is meant such line as is used in common with other companies by the company making this report, but not owned by it. Such line constitutes a part of the road operated, but forms no part of the property of the respondent.

For the purpose of this report, the respondent's proportion of road held under joint ownership or joint lease for operation should be entered on the opposite page under its appropriate class, 1, 3 or 4, and the remainder should be returned as if operated under trackage rights. All jointly owned or jointly leased mileage should also be shown in detail in the lower table on page 15.

• • • • •

On page 14 of each of said reports there appears the following:

"Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page entries or notations sufficient to show that no question or item has been overlooked. The word 'none' may be used wherever applicable. If returns are not made as required, some reference as 'See page 14' should be made to this page, on which a brief statement of the reason for the variation or omission should be given.

Upper part of page:

See 'Instructions' page 12.

Lower part of page:

Under '(1) Road jointly owned or (2) Road jointly leased' should be included all properties that are jointly owned or jointly leased by the respondent. This statement should be complete for all such properties. It should be kept in mind that joint ownership means joint title to the property, and

does not relate to joint control established through ownership of the capital stock where the title to the property rests in the corporation whose stock is owned.

For each road entered in this table, give under 'Explanatory Remarks' below the names of the other joint owners or joint lessees.'

26. On the designated opposite pages of each of said reports, being pages 13 and 15, (page 15 being a continuation of page 13) for the years 1908 and 1909, there appears the following printed heading:

"Road Operated.

Name of every Railway Company the Operations of which
are included in this Report.

In giving Roads below, observe the following classification
and order."

27. Under this heading in each of the said reports filed by The Wabash Railroad Company for the years 1908 and 1909 there appears the following entry:

"Lines operated under trackage rights.	Terminals		Miles of line for each road named.
	From	To	
Des Moines Union Ry. Co.	Chesterfield	Des Moines	2.4"

Under this same heading in each of said reports filed by the Chicago, Milwaukee & St. Paul Railway Company for the years ending June 30, 1908 and June 30, 1909, there appears the following entry:

"Question 5.

Des Moines Union Ry. : Des Moines : 1.72"

It is also agreed that the foregoing stipulation shall be copied into the record in said cause in lieu of the original reports made by the complainants to the Interstate Commerce Commission therein referred to.

Either party shall have the right at any time prior to the final hearing to make such objections to the foregoing extracts

from said reports as might have been made to the original reports.

WELLS H. BLODGETT,
JAMES L. MINNIS,
Solicitors for Wabash Railroad Co.

J. C. COOK,
Sol. for C., M. & St. P. Ry. Co.

GUERNSEY, PARKER & MILLER,
Solicitors for Defendants.

16

Stipulation as to Reports to Executive Council of the State of Iowa, filed October 23, 1912.

- 17 Stipulation of Counsel Respecting Annual Reports to the Executive Council of the State of Iowa for the Purpose of the Assessment of Their Property for Taxation Made by Various Railway Companies.

It is agreed that the annual reports of the railway companies hereinafter mentioned for the years hereinafter mentioned are all in substantially the same form, each containing the name of the company, the names of its officers, its place of business and a description of its real and personal property.

That under the law requiring railroad companies in Iowa to report their property to the Executive Council for the purpose of taxation, the first report made by the

Des Moines Northwestern Railway Company

was for the year ending January 1, 1883, and the last report made by the said company was for the portion of the year ending December 31, 1886.

- 18 That each of the said reports purports to describe the property within the state of Iowa owned or used by the said company during the period covered by the said reports, and the said property does not include any property located in the city of Des Moines.

Des Moines and Northwestern Railway Company.

That the Des Moines and Northwestern Railway Company filed like reports covering the period commencing October 1, 1887 and extending until January 1, 1892; that the said reports so filed by the Des Moines and Northwestern Railway Company purport to describe by specific description all of the real estate owned or used by it in the operation of its railroad in the state of Iowa, and that the said real estate so described

in the said reports, did not include any real estate located within the limits of the city of Des Moines.

St. Louis, Des Moines & Northern Railway Company.

That the St. Louis, Des Moines & Northern Railway Company filed like reports, the first report so filed being for the year ending January 1, 1883, and the last report so filed being for the year ending December 31, 1889. That the said reports contain what purport to be specific descriptions of the real estate in the state of Iowa owned or used by the said company in the operation of its railroad, and that said real estate was first listed by a specific description by lots, blocks, etc.

19 in the report for the year ending January 1, 1885. That the said reports listed and described the right of way of the said company as commencing at the east line of section 7 in township 78, range 24, in Polk county, Iowa, and extending west therefrom, and did not list or describe any real estate east of the said east line. That the said report for the year ending January 1, 1883 contained the notation under item 10 "have no shops or tools".

Des Moines and Northern Railway Company.

That the Des Moines and Northern Railway Company filed like reports for the years ending December 31, 1890 and January 1, 1892, the said reports containing what purported to be a specific description by lots, blocks, etc. of the real estate and right of way owned or used by the said company in the state of Iowa in the operation of its railroad. That the right of way so described in the said reports commenced with the east line of section 7, township 78, range 24, in Polk county, Iowa, and continued westerly therefrom, but included no right of way or real estate east of the said east line.

Des Moines, Northern and Western Railway Company.

That the Des Moines, Northern and Western Railway Company filed like reports for the years ending January 1, 1893, January 1, 1894 and January 1, 1895, which reports contained what purported to be a specific description by
20 lots, blocks, etc. of all of the real estate in the state of Iowa owned or used by the said company in connection with the operation of its railway, and which reports included in such description no real estate east of the east line of section 7-78-24 in Polk county, Iowa, except that each of the said reports for the years ending January 1, 1894 and January 1, 1895 included the following lots:

Lot two (2) Official Plat NE Section 8, township 78, range 24; Lot one (1) in N. W. Section 8, township 78, range 24;

Lot two (2) N. W. Sec. 8, township 78, range 24; Lot four (4) NW Section 8, township 78, range 24.

Des Moines, Northern and Western Railroad Company.

That the Des Moines, Northern and Western Railroad Company filed like reports for each of the years ending January 1, 1896, January 1, 1897, January 1, 1898 and January 1, 1899, each of which reports purported to describe by specific description by lots, blocks, etc. all of the real estate owned or used by the said company in the operation of its railroad in the state of Iowa. That the report so filed by the said railroad company for the year ending January 1, 1896 was the same in respect to the real estate described in it as the report filed by the Des Moines, Northern and Western Railway Company for the preceding year, but that each subsequent report filed by the Des Moines, Northern and Western Railroad Company described the right of way of that company as ending at the east line of section 7, in township 78, in range 24, in Polk county, Iowa, and contained no description of any real estate located east of the said east line.

The reports of the said company for the years ending January 1, 1897 and January 1, 1898 show in each instance main tracks leased of Des Moines Union Railway Company 2.12 miles.

Chicago, Milwaukee & St. Paul Railway Company.

The Chicago, Milwaukee & St. Paul Railway Company filed like reports for each of the years ending January 1, 1900, 1901, 1902, 1903, 1904 and 1905 and pursuant to the provisions of section 1334a of the Code of 1897 of Iowa filed on or before the 1st of April, 1905 with the Executive Council of the said state—

“a detailed statement showing the amount of real estate owned or used by it on December 31, 1904, for railway purposes, in each county in the state in which said real estate is situated, including the right of way, roadbed, bridges, culverts, depot grounds, station buildings, yards, section and tool houses, round houses, machine and repair shops, water tanks, turn tables, gravel beds and stone quarries, and for all other purposes, with the estimated actual value thereof, in such manner as may be required by the executive council,”

and that on or before the 1st day of April of each subsequent year, such corporation in like manner reported all real estate

acquired for any of the railway purposes above named during the preceding calendar year.

That neither the said annual reports so filed by the said Chicago, Milwaukee & St. Paul Railway Company nor the said detailed statement with the additions thereto has listed or described any real estate east of the east line of said section 7-78-24, Polk county, Iowa, as part of the real estate so owned or used by the said company.

22 Des Moines & St. Louis Railroad Company.

The Des Moines & St. Louis Railroad Company made its report to the executive council of the state of Iowa for the years ending January 1, 1883 and January 1, 1884; that in the said report for the year ending January 1, 1883, it reported machine, shop, machinery and round house located at Des Moines, and that in said report for the year ending January 1, 1884, it reported freight house, round house, water tank, machine shops and tools at Des Moines. That the reports of the Des Moines & St. Louis Railroad Company did not describe what purported to be its property by a specific description by lots and blocks.

Wabash, St. Louis & Pacific Railway Company.

That the Wabash, St. Louis & Pacific Railway Company made reports to the executive council of the state of Iowa for the purpose of taxation for the years ending January 1, 1885, December 31, 1885 and December 31, 1886; that the said reports for the years ending January 1, 1885 and December 31, 1885, under the heading of "Des Moines & St. Louis Railroad Company" schedule the round house, freight house, passenger house, water tank, shops and machinery as in the city of Des Moines.

That the first of the said reports to describe the real estate owned by a specific description by lots, blocks, etc. was the report for the year ending December 31, 1886, and that in the said report the said company listed as owned by it all of the real estate described in the deeds from How, How, trustee, Dodge, the St. Louis, Des Moines & Northern Railway Company, and the Des Moines & St. Louis Railroad Company, copies of which have been identified as exhibits 17 to 22 inclusive, in the stipulation between the parties hereto, filed March 23, 1911.

Wabash Western Railway Company.

That the Wabash Western Railway Company filed reports with the executive council of the state of Iowa for the years ending December 31, 1887 and December 31, 1888. That the

310 919

said report for the year ending December 31, 1887 reported under the head of "Des Moines & St. Louis Railroad Company" as property owned in the city of Des Moines, all of the property described in the said deeds from How, How, trustee, Dodge, the St. Louis, Des Moines & Northern Railway Company, and the Des Moines & St. Louis Railroad Company above referred to. That the said report of the Wabash Western Railway Company for the year ending December 31, 1888 did not in the property owned by the Des Moines & St. Louis Railroad Company list or describe any of the real estate described in the said deeds from How, How, trustee, Dodge, the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railroad Company above referred to.

That the specific description of the right of way reported in said last mentioned report as owned by the Des Moines & St. Louis Railroad Company and operated by the
24 Wabash Western Railway Company terminated on the west with the east line of section 2 in township 78, range 24, Polk county, Iowa.

That the report of the said Wabash Western Railway Company for the year ending December 31, 1887 reported the mileage of the Des Moines & St. Louis Railroad Company as 68.68 miles, and that the report of the said company for the year ending December 31, 1888 reported the mileage of the said Des Moines & St. Louis Railroad Company as 65.56 miles.

That the said report of the Wabash Western Railway Company for the year ending December 31, 1888 contained the following memorandum:

"Remarks.

Des Moines & St. Louis R. R. is operated by Wabash Western Railway Co. for account of Purchasing Committee.

Most of the leased track belongs to the Des Moines Union Railway Company and is used in common with other roads in Des Moines."

That each of the said reports of the Wabash Western Railway Company for the years ending December 31, 1887 and December 31, 1888 was signed and verified by James F. How, vice-president of the said company.

The Wabash Railroad Company.

That for the year ending December 31, 1888 down to and including the year ending January 1, 1905, The Wabash Railroad Company filed like reports with the executive council of the state of Iowa, in each of which said reports it listed by

specific description the real estate owned or used by it
 25 in the transaction of its business in the state of Iowa,
 and that on or before the 1st day of April, 1905, the
 said The Wabash Railroad Company did—

“make to the executive council a detailed statement showing the amount of real estate owned or used by it on December 31, 1904 for railway purposes, in each county in the state in which said real estate is situated, including the right of way, roadbed, bridges, culverts, depot grounds, station buildings, yards, section and tool houses, machine and repair shops, water tanks, turn tables, gravel beds and stone quarries, and for all other purposes, with the estimated actual value thereof, in such manner as may be required by the executive council,”

and that the said The Wabash Railroad Company made annual additions to the said detailed statement of real estate, covering real estate acquired by it in the state of Iowa for the railway purposes above named after the making of the said statement. That in the said reports so made by The Wabash Railroad Company, and in the said detailed statement and additions thereto the western terminus and boundary of the real estate and right of way owned by The Wabash Railroad Company within the state of Iowa was fixed as the east line of section 2, township 78, range 24, in Polk county, Iowa and said reports and statements included no real estate west of said line.

That in the said reports so filed by The Wabash Railroad Company, the railroad of the Des Moines & St. Louis Railroad Company and of The Wabash Railroad Company was in each instance described as extending from Albia to the city limits, or east city limits of the city of Des Moines, which city limits at that time then coincided with the said east line of section 2. That the mileage of the Des Moines & St. Louis Railroad Company was in each instance stated to be 65.56 miles.

26 Des Moines Union Railway Company.

That the first report filed by the Des Moines Union Railway Company with the executive council of the state of Iowa was for the year ending December 31, 1888. That the said report described by specific description as property owned by the Des Moines Union Railway Company, all of the property described in the said deeds from How, How, trustee, Dodge, St. Louis, Des Moines & Northern Railway Company, and the Des Moines & St. Louis Railroad Company to the Des Moines Union Railway Company, and each subsequent report made by the said Des Moines Union Railway Company to the executive council up to and including the report for the year

ending January 1, 1905, likewise described the said property as the property of the Des Moines Union Railway Company.

That in each of the said reports the eastern terminus of the railroad owned by the Des Moines Union Railway Company was described as the east city limits of the city of Des Moines or the old east city limits of said city, the said line being coincident with the east line of said section 2, township 78, range 24.

That the property acquired by the Des Moines Union Railway Company after the making of the deeds above referred to was listed and described by it in the said reports in the same manner as the property described in said deeds was listed, and described in said reports.

That the statements filed by the said Des Moines Union Railway Company with the executive council under section 1334a of the Code of 1897 of Iowa list and describe as a part of the property owned by the Des Moines Union Railway Company all of the property described in the said deeds from the said How, How, trustee, Dodge, the St. Louis, Des Moines & Northern Railway Company, and the Des Moines & St. Louis Railroad Company.

That ever since the making of the first report of the Des Moines Union Railway Company hereinbefore referred to, the said property described in the said deeds from the said How, How, trustee, Dodge, the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railroad Company has been assessed and taxed to the Des Moines Union Railway Company.

That the property subsequently conveyed to the Des Moines Union Railway Company has been assessed and taxed to it in each year since it was conveyed to said company.

That each of the said reports hereinbefore referred to was verified by the oath of some officer of the company making the said report.

This stipulation is not intended to supersede or affect a stipulation of the parties heretofore made covering certain matter shown by reports of the Des Moines Union Railway Company, which stipulation is set out at page 491 of the printed copy of complainants' evidence, but is in addition to said stipulation last mentioned.

28 Each party shall have the right at any time prior to the final hearing to make such objections to the matters contained in this stipulation as might have been made to the original reports hereinbefore referred to.

WELLS H. BLODGETT &
J. L. MINNIS,

J. C. COOK & R. RYAN,
Solicitors for complainants.

GUERNSEY, PARKER & MILLER,
Solicitors for defendants.

29 **Deposition of T. J. Tobin, filed June 21, 1911.**

30 In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

The Chicago, Milwaukee & St. Paul Railway Company and
The Wabash Railroad Company, Complainants, No.
2449. In Equity.

VS.

The Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son,
Defendants.

Deposition of a witness produced, sworn and examined on the 31st day of March, 1911, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of that day at the Auditor's Office of the Wabash Railroad Company, southwest corner of Seventh and Chestnut Streets, in the City of St. Louis, State of Missouri, before me, Arthur E. Mooney, a Notary Public, in and for the City of St. Louis, State of Missouri, in a certain cause now pending in the Circuit Court of the United States for the Southern District of Iowa, Central Division, wherein the Chicago, Milwaukee & St. Paul Railway Company and Wabash Railroad Company are complainants and the Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son are defendants, on the part of the defendants.

Present: J. C. Cook, Esq., counsel for the Chicago, Milwaukee & St. Paul Railway Company, Wells H.
31 Blodgett, Esq., and J. L. Minnis, Esq., counsel for the Wabash Railroad Company and N. T. Guernsey, Esq., counsel for defendants.

T. J. TOBIN, of lawful age, being produced, sworn and examined as a witness on the part of the defendants, deposes and says as follows:

Direct Examination

By Mr. Guernsey:

Q. Your name is T. J. Tobin? A. Yes sir.

Q. You reside in St. Louis, Missouri? A. Yes sir.

Q. What is your occupation?

A. Auditor of the Wabash Railroad Co.

Q. You have been in the auditing department of the Wabash Railroad Co. and its predecessors for how long?

A. For about 30 years.

Q. Do you remember when you went into the auditing department of the Wabash, St. Louis & Pacific Railway Co.?

A. November, 1880.

Q. I wish you would look at the paper marked Exhibit A., Tobin Deposition and state whether or not that is a copy of the account in the ledger of the Wabash, St. Louis & Pacific Railway Co. with the Des Moines & St. Louis Railroad Co.?

A. Yes sir.

Q. State whether or not this account marked Exhibit A. to your deposition shows the expenditures on account of the construction of the Des Moines & St. Louis Railroad?

A. Yes sir.

It is hereby stipulated that the copy, Exhibit A. may be used with the same force as if it were the original book and that the identification and proof of the books are waived.

The paper referred to, Exhibit A. Tobin Deposition, is in words and figures as follows, to-wit:

FOLD OUT IS TOO LARGE TO BE FILMED

22

Des Moines & St. Louis R. R.

1881			1881		
Jan. 31	To Audited Vouchers.....	3590.16	Feb. 28	By J. S. Clarkson.....	2000.00
Feb. 28	" Engineer Dept.....	96770.75	Apr. 30	" Real Estate Des Moines.....	67163.86
Mar. 31	" ".....	42531.14	Aug. 31	" Construction Vouchers.....	1534.05
Apr. 30	" ".....	37324.19	" Real Estate Des Moines.....	14000.00	
	" Station Agents Frit. W. D.....	3589.60	Sept. 30	" H. S. Hopkins & Co.....	592.58
May 31	" Engineer Dept.....	74523.56	Dec. 31	" Road Dept. Q. M. & P.....	2418.64
	" Station Agents W. D.....	3286.41	" Construction Vouchers.....	65067.00	
June 30	" Storekeeper P. & I.....	1300.40	" Audited Bills.....	29.65	
	" Homeston & Shrin. R. R.....	11.52	" Exp. for Const & Equip.....	1198935.00	
	" Station Agents E. D.....	961.70			
	" Construction Vouchers.....	132508.22			
	" St. L. J. & S. R. R.....	25.00			
July 31	" Freight on Co. Material.....	144.00			
	" ".....	130.80			
	" Storekeeper, P. & I.....	36.20			
	" Station Agents, W. D.....	4016.28			
	" St. L. J. & S. R. R.....	25.00			
	" Construction Vouchers.....	133422.02			
Aug. 31	" Freight on Co. Material.....	34.40			
	" ".....	344.00			
	" Construction Vouchers.....	145406.24			
	" Road Dept. Iowa.....	11.08			
	" Storekeeper W. D.....	262.66			
	" " C. & I.....	233.19			
	" Station Agents W. D.....	4270.43			
Sept. 30	" Construction Vouchers.....	135726.28			
	" Road Dept. Iowa.....	74.68			
	" Storekeeper.....	384.71			
	" " W. D.....	150.00			
	" Fuel Dept. C. & I.....	31.00			
	" St. L. J. & S. R. R.....	50.00			
	" Station Agents.....	1679.14			
	" Des Moines & Nor. West.....	1534.04			
Oct. 31	" Dally, Templin & Co.....	12000.00			
	" Freight on Co. Material.....	84.00			
	" Sundries.....	500.37			
	" Storekeeper.....	772.09			
	" B. & B. Dept.....	780.46			
	" Des N. & N. W.....	65067.00			
	" Road Dept. Iowa.....	502.90			
	" ".....	62.43			
	" Construction Vouchers.....	81214.79			
	" Freight on Co. Material.....	108.00			
	" Station Agents.....	1153.20			
Nov. 30	" A/c Audited Bills.....	44.26			
	" Freight on Co. Material.....	108.00			
	" Storekeeper.....	986.72			
	" Road Dept. Iowa.....	567.67			
	" Construction Vouchers.....	63819.65			
	" Fuel Dept. Iowa.....	204.87			
	" St. L. J. & S. R. R.....	50.00			
	" Station Agents.....	21817.67			
	Forward.....	967713.00		Forward.....	1351741.38
Exhibit A Tobin Dep.					
3-31-11 A. E. M.					

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Des Moines & St. Louis R. R.

1881	Forward.....	997715.00	Forward.....	1351741.38
Dec. 31	To Freight on Co. Material.....	101.76		
	" Road Dept. Iowa.....	975.44		
	" Fuel " ".....	315.76		
	" Road " Q. M. & P.....	2418.64		
	" Storekeeper.....	1335.98		
	" B. & B. Dept.....	1225.00		
	" Mach. ".....	9.64		
	" Russell Sage.....	199027.79		
	" Sundry Depts.....	40557.93		
	" Construction Vouchers.....	104878.47		
	" St. L. J. & S. R. R.....	25.00		
	" Station Agents, Freight.....	3154.97		
		<u>1351741.38</u>		<u>1351741.38</u>
		1251741.38		
1882			1882	
Jan. 31	To Chief Engineer.....	582.00	Jan. 31	By Real Estate at Des Moines..... 1600.00
	" Machinery Dept.....	3.86		" Audited Bills..... 215.26
	" Storekeeper.....	406.00		" J. S. Clarkson..... 3032.76
	" ".....	74.50	Feb. 28	" Construction Vouchers..... 102.24
	" Road Dept.....	154.15	Apl. 30	" Des Moines & N. W..... 61.00
	" Freight Co. Material.....	4.00	May 31	" Property at Des Moines..... 425.00
	" Construction Vouchers.....	53005.13	June 30	" " "..... 8145.25
	" Station Agents.....	569.96	July 31	" Audited Bills..... 503.49
Feb. 28	" Des Moines & N. W.....	390.00	Aug. 31	" J. S. Clarkson..... 390.00
	" Transp. Dept.....	16.00		
	" Freight Co. Material.....	69.00		
	" Vouchers.....	1044.55		
	" Construction Vouchers.....	12599.21		
	" Station Agents.....	45.51		
Mar. 31	" Road Dep.....	258.39		
	" Freight Co. Material.....	61.00		
	" Construction Vouchers.....	18010.07		
Apl. 30	" Road Dept.....	25.84		
	" " ".....	90.00		
	" Construction Vouchers.....	6720.05		
	" Des Moines & N. W.....	138.00		
May 31	" Pay Rolls.....	1383.87		
	" Des Moines & N. W.....	1244.88		
	" Misc. Earnings.....	963.00		
	" Transp. Dept.....	42.37		
	" Chief Engineer.....	109.77		
	" Road Dept.....	129.62		
	" Construction Vouchers.....	10393.94		
	" Station Agents.....	24.19		
June 30	" Transp. Dept.....	233.01		
	" Machinery Dept.....	315.00		
	" Chief Engineer.....	600.12		
	" Road Dept.....	134.37		
	" Pay Rolls.....	3102.83		
	" Construction Vouchers.....	6589.43		
	Forward.....	<u>119533.62</u>	Forward.....	<u>14475.00</u>

1882	Forward	119533.62	1882	Forward	14475.00
July 31	To Pay Rolls	3020.30	Sept. 30	By Audited Bills	310.22
"	Transp. Dept.	275.39	Oct. 31	" Cash	12.31
"	Car	250.00	"	Property at Des Moines	13551.86
"	Chief Engineer	619.89	"	Audited Bills	268.25
"	Machinery Dept.	736.00	Nov. 30	" Construction Vouchers	.02
"	Vouchers	427.50	"	Property at Des Moines	5558.75
"	"	14723.66	Dec. 31	"	1246.39
Aug. 31	" Transp. Dept.	619.48	"	J. S. Clarkson	17.70
"	Chief Engineer	2742.76	"	Exp. for Constn. & Equip	192313.16
"	Road Dept.	22.61			
"	Machinery Dept.	853.91			
"	Telegraph	405.23			
"	Car	2.45			
"	Transp.	22.00			
"	Pay Rolls	3602.40			
"	Vouchers	927.73			
"	Station Agents	1878.09			
Sept. 30	" Pay Rolls	4301.46			
"	Transp. Dept.	338.94			
"	Telegraph	474.36			
"	Machinery	379.50			
"	Chief Engineer Dept.	556.08			
"	Road	231.50			
"	Construction Vouchers	31917.87			
Oct. 31	" Pay Rolls	4366.90			
"	"	471.82			
"	Freight Co. Material	78.05			
"	Transp. Dept.	75.15			
"	Telegraph	212.25			
"	Car	.75			
"	Machinery	440.91			
"	Chief Engineer Dept.	3289.98			
"	Vouchers	10259.30			
Nov. 30	" Pay Rolls	3564.04			
"	Freight Co. Material	45.08			
"	Transp. Dept.	172.09			
"	Chief Engineer	1836.48			
"	Machy. Dept.	304.45			
"	Vouchers	7772.14			
Dec. 31	" Pay Rolls	1478.55			
"	Transp. Dept.	114.00			
"	Machinery	14.86			
"	Chief Engineer Dept.	222.66			
"	Construction Vouchers	4171.47			
		227753.66			227753.66
1883			1883		
Feb. 28	To Vouchers	305.00	Feb. 28	By Property at Des Moines	37000.00
Mar. 31	" Des Moines N. W.	171.30	June 30	" Vouchers	140.00
"	Vouchers	526.84	Dec. 31	"	375.59
Apl. 30	"	500.00			
July 31	"	1701.65			
Oct. 31	"	747.90			
Nov. 30	"	296.30			
Dec. 31	"	495.00			
	Forward	4743.90		Forward	37515.59

35

Des Moines & St. Louis R. R.

1883	Forward.....	4743.90	Forward.....	37515.59	
Dec. 31	To J. C. Taylor.....	821.56			
	" Cost of Road &c.....	31950.04			
		<u>37515.59</u>		<u>37515.59</u>	
1884			1884		
Jan. 31	To Vouchers.....	253.85	May 28	By Cost of Road.....	37141.48
Feb. 29	" ".....	1248.90			
Mar. 31	" ".....	473.05			
May 31	" ".....	35165.68			
		<u>37141.48</u>			<u>37141.48</u>
June 30	To Vouchers.....	3656.48	June 30	By Vouchers.....	300.00
	" Audited Bills.....	268.25	July 31	" Cash.....	2060.84
Oct. 31	" Vouchers.....	103.00		" Vouchers.....	3656.48
Dec. 31	" ".....	279.50		" ".....	459.05
	" Liabilities Paid.....	2272.36	Dec. 31	" ".....	228.40
	" Cost of Road &c.....	1025.18			
		<u>7604.77</u>			<u>7604.77</u>
1885			1885		
Sept. 30	To vouchers.....	125.00	Dec. 31	By Cost of Road &c.....	243.16
Oct. 31	" ".....	100.00			
Dec. 31	" ".....	18.16			
		<u>13431.04</u>			<u>13431.04</u>
1886			1886		
Mar. 31	" ".....	12425.49	Jan. 31	By Audited Vouchers.....	18.16
Apl. 30	" ".....	1005.55	Apl. 30	" Liabilities Paid.....	647.58
		<u>13431.04</u>	Dec. 31	" Cost of Road.....	12765.30
					<u>13431.04</u>
1887			1887		
Apl. 30	To Vouchers.....	300.00	June 30	By Cost of Road.....	300.00

36 Q. I call your attention to Exhibit B. Tobin Deposition and ask you to state whether or not that is a correct copy of the ledger account of the Wabash, St. Louis & Pacific Railway Co. with the Des Moines Northwestern Railway Co.? A. Yes sir.

Q. Does that account show the expenditures on account of the construction of the Des Moines Northwestern Railway Co. at the date stated there? A. Yes sir.

Q. I mean the expenditures of the Wabash Railroad Co.?

A. Yes sir.

Counsel state there is the same stipulation and [waiver] as to Exhibit B. Tobin Deposition which is in words and figures as follows, to-wit:

THE C., M. & ST. P. RY. CO. ET AL. VS. THE DES MOINES UNION RY. CO., ET AL.

32

Des Moines and North Western Ry.

Forward.....		304810 25	Forward.....		305046 21
1882					
Aug. 31	To Chief Engineer.....	1565 48	Nov. 30	By Cash.....	300 00
	" Car Dept.....	2 68		By Property Des Moines.....	1668 43
	" Pay Rolls.....	2128 10	Dec. 31	By Cash.....	19 75
	" Vouchers.....	18840 60		Construction Vouchers.....	1550 00
Sept. 30	" Pay Rolls.....	1188 44		" Delayed.....	30 80
	" Chief Engineer.....	1126 61		" Exp. for Const. & Equipment.....	99830 88
	" Vouchers.....	14016 68			
	" Freight Co. Mat'l.....	24 00			
	" ".....	573 97			
Oct. 31	" Pay Rolls.....	6883 29			
	" Chief Engineer.....	1881 71			
	" G. F. Shepherd P. M.....	606 88			
	" Vouchers.....	16881 20			
Nov. 30	" Pay Rolls.....	1160 10			
	" Freight Co. Mat'l.....	250 25			
	" Chief Engineer.....	2398 60			
	" Vouchers.....	17801 40			
Dec. 31	" Pay Rolls.....	1192 61			
	" Chief Engineer.....	1298 78			
	" Construction Vouchers.....	13131 45			
	" G. F. Shepherd P. M.....	714 84			
		<u>400380 67</u>			<u>400380 67</u>
1883					
Feb. 29	To Vouchers.....	1680 50	Mar. 31	To Sanborn.....	608 30
Mar. 31	" Gen. G. M. Dodge.....	1002 50	May 31	" Contracts Vouchers.....	30 80
	" Vouchers.....	372 30	Oct. 31	" Vouchers.....	21 80
Apr. 30	" ".....	601 50	Dec. 31	" Income a/c.....	3336 22
May 31	" Audited Bills.....	6 30			
July 31	" Vouchers.....	331 79			
	" ".....	1350 35			
Sept. 30	" ".....	118 22			
Oct. 31	" ".....	616 50			
Dec. 31	" ".....	35 10			
		<u>6297 12</u>			<u>6297 12</u>
1884					
Jan. 31	To Vouchers.....	135 50	May 28	By Cost of Road.....	3365 37
Feb. 29	" ".....	611 56			
Mar. 31	" ".....	2806 31			
		<u>3365 37</u>			<u>3365 37</u>
June 30	To Vouchers.....	620 42	Oct. 31	By Gen. G. M. Dodge.....	4676 44
Oct. 31	" Gen. G. M. Dodge.....	65718 07	Dec. 31	" Cost of Road A/c.....	82282 65
		<u>86388 49</u>			<u>86388 49</u>
1885					
Sept. 30	To Vouchers.....	20 65	Dec. 31	By Audited Bills.....	961 00
Dec. 31	" Audited Bills.....	200 00			
	" Cost of Road A/c.....	573 95			
		<u>961 00</u>			<u>961 00</u>
1886					
Mar. 31	To Audited Bills.....	6 00	Dec. 31	By Cost of Road.....	628 50
Apr. 30	" Vouchers.....	622 50			
		<u>628 50</u>			<u>628 50</u>
1887					
Apr. 30	To Vouchers.....	136 90	June 30	By Cost of Road.....	136 90

29 Q. Now you remember that on the 12th day of January, 1910, we took your deposition here in a case then pending in the District Court of the State of Iowa in and for Polk County, entitled Chicago, Milwaukee & St. Paul Railway Co. vs. Des Moines Union Railway Co. and that in that case you prepared a statement showing the expenditures of the Wabash, St. Louis & Pacific Railway Co. on account of the terminal property in Des Moines? A. Yes sir.

It is agreed that a certified copy of Exhibits A, B, C, C-2, C-3 and C-4 to the deposition of Mr. Tobin may be furnished to the Notary taking this deposition, and may be attached to this deposition and returned as an exhibit to it certified by the clerk of the court in which the deposition is now on file. (See p. 77.)

Q. Exhibit A. to your former deposition is headed, "Real Estate, Des Moines, joint account D. & St. L. and D. & N. W.;" these initials D. & St. L. and D. & N. W. indicate what?

A. D. & St. L. indicates Des Moines & St. Louis Railroad and D. & N. W. indicates Des Moines and Northwestern Railroad.

Q. And these exhibits to your former deposition A, B, C, C-2, C-3 and C-4 show with as much detail as appears on the books of the Wabash, St. Louis & Pacific Railway Co., the record of the expenditures that I referred to? A. Yes sir.

Q. These statements and exhibits are largely, if not entirely copies of the journal entries relating to these expenditures, are they not? A. Yes sir.

Q. Now, to illustrate, in Exhibit C. there is an entry here under date of February 8th, 1882, of \$18,711.07, and in connection with it a memorandum "Statement in detail filed with J. V. 77;" J. V. means journal voucher, doesn't it?

A. Yes sir.

40 Q. And you searched for that journal voucher when we took your deposition ~~before~~ and you were unable to find it? A. Yes sir.

Q. So that the details are not any more in your possession as to that item than they appear here?

A. No sir.

Q. As to this item \$18,711.07, as to which you are not able to find the journal voucher, does the journal show how this expense was distributed? A. Yes sir.

Q. Will you read what the journal shows with reference to that matter, reading what follows the words, "for amount expended in the City of Des Moines charged to construction account, Des Moines Northwestern Railway now transferred?"

A. (Reading) "Statement in detail filed herewith, sub-classification charged and to be credited. Buildings and fix-

tures \$606.32; bridging \$38.77; caboose and freight cars \$180.; engineering \$467.45; frogs and switches \$34.61; grading \$2046.39; machine shops and engine houses \$6063.78; miscellaneous \$165.72; sidings \$513.53; soliciting and right of way expenses \$4.; track laying and surfacing \$752.28; traffic stations and warehouses, \$6411.40; water stations \$1426.82; total \$18711.07."

Q. I believe that when we were here before we found the vouchers referred to in the next item, No. 10056 and 10057, were for principal and interest on account of the purchase of some lots, were they not, without going into details?

A. Yes sir.

Q. Now, referring to Exhibit A. to your former deposition there is a charge there to this account of \$67,163.86, is that the charge which corresponds with the credit under date of April 30th, 1881, in the account with the Des Moines & St. Louis Railroad which you have identified as Exhibit A. to this deposition? A. Yes sir.

41 Q. And in this same Des Moines & St. Louis Railroad Co. account under date of August 31st, there is a credit of \$14,000.; did that credit correspond to the charge of \$14,000. under date of August, 1881, in the account Exhibit B to your former deposition? A. Yes sir.

Q. Still referring to this Des Moines & St. Louis account, Exhibit A. to this deposition, there is a credit under date of January 31st, 1882, of \$1600., by real estate at Des Moines, is that a part of the item of \$3956.01 appearing as a charge under February, 1882, in the account Exhibit C., to your former deposition? A. Yes sir.

Q. Now, referring still to this Des Moines & St. Louis account Exhibit A. to this deposition, under date May 31st, 1882, there is a credit of \$425., property at Des Moines, is that credit the credit that corresponds to the charge in the account Exhibit C-2, to your former deposition, "Amount charged to construction, Des Moines & St. Louis R. R. Co., account December, 1881 in J. V. S. 42, for one half of one 54 foot turn table shipped to Des Moines, Iowa, in cars 2404 K. C. & N., 304 I. P. C. now transferred"? A. Yes sir.

Q. On June 30th, 1882, there is a credit in this Des Moines & St. Louis R. R. Co. account by property at Des Moines of \$8145.25, is that the item appearing in your account Exhibit C-2 under date of June, 1882, for amounts charged in construction record now transferred, Des Moines & St. Louis Railroad? A. Yes sir.

Q. And in this same Des Moines & St. Louis Railroad Company account, Exhibit A. to this deposition, appears under

42 date of October 31st, 1882, a credit by property at Des Moines \$13551.86; is that a part of the charge in the account Exhibit C-3 to your earlier deposition, of \$13812.73, under date of October, 1882? A. Yes sir.

Q. In this account, Exhibit A. to this deposition, Des Moines & St. Louis R. R. Co., under date of November 30th, 1882, there is a credit by property at Des Moines \$5558.75; is that credit included in the item of \$7247.18 charged in the account of Exhibit C-3, in your former deposition, in November, 1882? A. Yes sir.

Q. And is the item in the Des Moines & St. Louis Railroad Company account Exhibit A. to this deposition credited under date of December 31st, 1882, property at Des Moines, \$1246.39, the credit which corresponds to the charge in the account Exhibit C-3 to your former deposition, of the same amount, December, 1882? A. Yes sir.

Q. Now referring to Exhibit B. to this deposition, the account with the Des Moines Northwestern, I see the account is headed, "Des Moines and North Western Ry., that is the way it appears on the ledger, is it? A. Yes sir.

Q. This was prior to the organization of that company and that is a clerical error, I suppose; now, there is an item here of \$1174.59 in this Exhibit B. to this deposition, credited under date of January 31st, 1882; is that also a part of the charge in Exhibit C. to your former deposition of \$3956.01 in February, 1882? A. Yes sir.

Q. Referring again to the item of \$18711.07, charged in February, 1882, in Exhibit C. to your former deposition, is that the charge which corresponds to the credit in the account Exhibit B. to this deposition, under date of February 28th, 1882, by property Des Moines?

A. Yes sir.

Q. And is the charge \$3257.24 made under date of April, 1882, in Exhibit C. to your former deposition the charge which corresponds to the credit of the same amount in account Exhibit B. to this deposition, under date of April 30th, 1882, property Des Moines? A. Yes sir.

Q. And is the next item on Exhibit C. to your former deposition charged there \$425., the charge which corresponds with the credit on the books of the Wabash, St. Louis & Pacific Railway Company to the account Exhibit B. of this deposition of the same amount under date of May 31st, 1882, by property, Des Moines? A. Yes sir.

Q. And is the next item in Exhibit C. to your former deposition, \$4965.91, the charge which corresponds to the credit in Exhibit B. to this deposition of the same amount under date of May 31st, 1882, property, Des Moines?

A. Yes sir.

Q. And is the charge in Exhibit C. to your former deposition, \$591.91, under date of August, 1882, the charge which corresponds with the credit in Exhibit B. to this deposition, under date of August 31st, 1882, by property at Des Moines, \$591.91? A. Yes sir.

Q. And is the charge \$330. in Exhibit C-2 to your former deposition, under date of September, 1882, the charge which corresponds to the credit in Exhibit B. to this deposition of the same amount, September 30th, by property at Des Moines?

A. Yes sir.

Q. And is the item under date of October charged in Exhibit C-2 to your former deposition, \$260.87, the charge which corresponds to the credit under date of October 31st, 1882, in the same amount, property at Des Moines, in Exhibit B. to this deposition? A. Yes sir.

Q. Is the credit in Exhibit B. to this deposition, \$1688.43, by property at Des Moines, under date of November 30, 1882, made up of the three items charged in Exhibit C-3, to your former deposition, November, 1882, \$849.25, \$751.89 and \$87.29? A. Yes sir.

Q. Now, did this statement which you made up in connection with your former deposition, and which is Exhibits A. B. C, C-2, C-3, C-4, to that other deposition, include all of the expenditures of the Wabash, St. Louis & Pacific Railway Co. on account of the terminal property in Des Moines as far as they appear on the books of that company? A. Yes sir.

Q. Now, in this Exhibit C. to your former deposition there is charged in May, 1882, an item, "Amount expended by Genl. Dodge in city limits of Des Moines as per statement filed with J. V. No. 1991½, marked A, \$36391.39,"—in the first place J. V. means journal voucher there, I suppose? A. Yes sir.

Q. Now, will you explain just what a journal voucher is or was at that time?

A. A journal voucher covers the entry to be made upon the books and it is customary to file any correspondence or documents with the journal voucher as a matter of record.

Q. A journal voucher itself would be a copy of the entry or the entry would be copied from the journal voucher?

A. Yes sir.

Q. And whoever authorized the making of the entry would sign this journal voucher, or in some way indicate that the entry was authorized?

A. Yes, it might not be signed but the handwriting would indicate who made it.

Q. Then as a matter of convenience you would file with this journal voucher explanatory correspondence or statements or any papers that might tend to explain the entry?

A. Yes sir, in connection with the transaction.

Q. Now, have you this journal voucher 1991½?

A. Yes sir, here is the original.

Q. In whose handwriting is the original journal voucher?

A. In my handwriting.

Q. Is this paper that is marked "Exhibit C. Tobin Deposition 3-31-11" the journal voucher referred to? A. Yes sir.

Q. Now referring to this original journal voucher that has been marked "Exhibit C. Tobin Deposition 3-31-11," there are attached to that, are there not, Exhibits D. to H. inclusive, all marked Tobin Deposition 3-31-11? A. Yes sir.

Q. These papers, Exhibits C. to H. inclusive, to your deposition, 3-31-11 are attached together as a file and commencing at the bottom run in alphabetical order, that is, C, D, E, F, G, H? A. Yes sir.

Q. Now, this original journal voucher Exhibit C. Tobin Deposition, 3-31-11, is the voucher for the entry in whose account? A. Gen. G. M. Dodge's account.

Q. It shows a credit to Gen. Dodge's account of an aggregate of \$103436.48, does it not? A. Yes sir.

Q. And in that credit there is included an item of \$36391.39, that is correct, is it? A. Yes sir.

Q. And that item, \$36391.39, is the credit corresponding with the charge of the same amount in the account Exhibit C. to your former deposition, under date of May, 1882?

A. Yes sir.

Q. And the explanation immediately following that "For amount expended by Genl. Dodge, in City limits of Des Moines as per statement herewith filed, marked 'A'", is explanatory of this \$36,391.39, is it not? A. Yes sir.

46 Q. And that statement attached to the journal voucher marked "A" is the paper we have now marked "Exhibit H. Tobin Deposition 3-31-11"? A. Yes sir.

Q. In the same way the statement "Construction account, Des Moines, North Western Railway, \$67045.09," shows another charge that is made to make up the balance of the credit of \$103436.48 given Gen. Dodge by this entry? A. Yes sir.

Q. The paper marked "Exhibit G. Tobin Deposition 3-31-11," is Exhibit B. to this journal voucher and shows, does it not, the items of the expenditures going to make up the \$23,387.62 which is included in the aggregate credit to Gen. Dodge of \$103,436.48, this \$23,387.62 being one half of the gross amount of those expenditures? A. Yes sir.

Q. And then Exhibit F. Tobin Deposition 3-31-11, is the statement referred to in this journal voucher as Exhibit C.,

showing how the item of \$43,657.47 included in said total credit to Gen. Dodge is arrived at? A. Yes sir.

Q. And the two papers marked "Exhibit E. Tobin Deposition, 3-31-11" and "Exhibit G. Tobin Deposition 3-31-11" are explanatory statements which were filed with the journal voucher in accordance with the custom to which you have already referred? A. Yes sir.

It is hereby stipulated that the Notary may make copies of Exhibits C. to H. inclusive, Tobin Deposition, 3-31-11, and return them as exhibits to the said deposition, marking them as originals, and that said copies may be used with the same force and effect as the originals.

The exhibits referred to are in words and figures as follows, to-wit:

47	Wabash, St. Louis & Pacific Railway Co.	1882
	JOURNAL ENTRY	May
		TO
<hr/>		
Sundries to Genl. G. M. Dodge.....		103,436.48
<hr/>		
Property in Des Moines J. F. How, Trustee.....		36,391.39
For amount expended by Genl. Dodge in City		
limits of Des Moines as per statement herewith		
filed marked "A"		
Construction A/C Des Moines No. West Ry.....		67,045.09
For amount expended by Genl. Dodge on the road between		
Des Moines and Clive as per statement filed		
herewith marked "B"		
Account	Total	½ W. St. L. & Pac.
Bridging.....	5,939.43	2060.72
Bldgs. & Fixt.....	107.31	53.66
Cross Ties.....	5,162.80	2581.40
Cattle G. & Cross.....	75.00	37.50
Engineering.....	1,243.92	621.96
Fencing.....	80.00	40.00
Frogs & Switches.....	462.15	231.08
Grading.....	13,703.57	6 851.78
Hand Cars.....	47.00	23.50
Iron & Steel Rails—Frt.....	914.10	457.05
Land & Land Dam.....	9,690.25	4845.12
Miscellaneous.....	944.66	472.33
Spikes & Fast.....	1,408.23	704.12
Sal. & R. of Way Exp.....	247.28	123.64
Traffic Sta. & W. H.....	854.50	427.25
Track Tools.....	538.55	269.27
Telegraph.....	390.44	195.22
Track Laying etc.....	4,102.55	2051.27
Water Stations.....	863.51	431.75
	<hr/>	<hr/>
	46,775.25	23387.62

Also for amount expended by him on the Road from Clive to Waukee as per statements filed herewith and marked "C" all payable by W. ST. L. & Pac. Ry.

Forward.....23,387.62

I Certify that the above entry is correct and should be made on the books of this Company.

Exhibit C. Tobin Dep.

3-31-11

A. E. M.

48	Wabash, St. Louis & Pacific Ry. Co.	1882
	JOURNAL ENTRY	May
No. 2.		TO

Forward.....23,387.62

Account		
Bridging.....	6,760.08	
Cross Ties.....	6,313.90	
Engineering.....	1,673.66	
Frogs & Sw.....	132.67	
Grading.....	19,011.58	
Hand Cars.....	47.00	
Iron & Steel Rails-Frt.....	1,344.75	
Land & Land Dam.....	6,211.55	
Miscellaneous.....	667.60	
Sal. & R. of Way Exp.....	510.52	
Spikes & Jt. Fastgs.....	2,140.44	
Tracklaying & Surf.....	2,463.77	
Track Tools.....	560.67	
Telegraph.....	535.19	

Less.....48,373.38

Spikes & Joint Fastenings

borrowed from Des. M. & No.

West Ry.4,715.91 43,657.47

67,045.00

—11—

Genl. G. M. Dodge

to Const. A/C Des M. No. West.....110,542.98

For rails furnished by W. St. L. & Pac. Ry. for road between Des Moines and Clive— $\frac{1}{2}$ cost payable by Genl. Dodge—Distance 5.54 miles—55 tons per mile costing in St. Louis \$49.80 per ton

Total \$15,174.06 - $\frac{1}{2}$ -7,587.03

Also for rails furnished for road from Clive to Boone—37.53 miles 55 tons per mile—\$49.80 per ton in St. Louis—Gen. Dodge having paid freight north of St. Louis.....102,955.95

See certificates of measurement and other relative
papers filed herewith

I certify that the above entry is correct and should be made on the books of this
Company.

49 Genl G. M. Dodge,
In account with
Wabash, St. Louis & Pacific Railway Co.

DEBITS

Expenditures by W. St. L. & P. Ry. Co. on road		
Des Moines to Clive, \$15,174.06		
1-2 payable by Genl. Dodge.....	\$7,587.63	
On road Clive to Boone.....	102,955.95	\$110,542.98

CREDITS

Expenditures by Genl Dodge on acct. property in city		
limits of Des Moines.....	\$36,391.39	
on road Des Moines to Clive,		
	\$46,775.25	
1-2 payable by W. St. L. & P. Ry. Co.....	23,387.62	
On road Clive to Waukeec.....	43,657.47	\$103,436.48
Balance due W. St. L. & P. Ry. Co.....		7,106.50
May 31st, 1882.		

A copy of above was sent by Mr. Trumbull to Polk & Hubbell, in June 82.

Exhibit D—Tobin Dep.

3-31-11

A. E. M.

50

St. Louis, May 31, 1882.

Jas. F. How, Esq.
3rd Vice President,
St. Louis, Mo.

Dear Sir:—

In accordance with your instructions, the assistant Auditor visited Des Moines on the 29th inst., and the following is respectfully submitted as result of a careful examination of vouchers and accounts, made by him, in connection with Mr. F. M. Hubbell, President, Narrow Gauge Const. Co., and Mr. E. C. Kinney, Chief Engineer in charge of construction.

Statements in detail of expenditures made by Gen'l Dodge, were prepared and certified, and will be submitted for your future information as soon as copies can be prepared in this office.

Expenditures by W. St. L. & P. R'y Co.

On road from city limits of Des Moines to Clive including property in Clive.
Iron Rails, 5.54 miles at 55 tons per mile, 304.7 tons, costing in St.

Louis \$49.80 per ton.....	\$15,174.06
----------------------------	-------------

Freight north of St. Louis paid by Genl Dodge.

On Road from Clive to Boone

Iron rails 37.53 miles, 55 tons per mile, 2064.15 tons at		
\$49.80 per ton.....	\$102,794.67	
Freight St. Louis to Ottumwa, on 19 cars ties.....	161.28,	\$102955.95

Expenditures by Genl Dodge

On account of property in city limits of Des Moines.....	\$36,391.39
On account of road from city limits of Des Moines to Clive.....	46,775.25
On account of road from Clive to Waukee.....	43657.47

Under my interpretation of the terms of proposed settlement, I find that Gen'l Dodge will owe this company \$7,106.50 as fully set forth in account herewith enclosed.

Yours truly,

Exhibit E—Tobin Dep.

3-31-11

A. E. M.

51 COST OF ST. LOUIS DES MOINES & NORTHERN RY, FROM
CLIVE TO WAUKEE.

June 7th 1881. In Voucher \$1,149.73.

Short & Foreman part of their voucher 17.50 for field books and original charged to Engineer Tools.....	5.00
H. D. Thompson 1-4 of his expense to Delphi, Ind. 48.85 to examine Iron ets, originally charged to Rolling stock.....	12.22
M. E. Nutting et al, 1-4 to Pay roll Engineer corps for May originally charged to Engineering.....	131.00
M. E. Nutting part of his voucher for 244.15 for board of his crops, for May & originally charged Engineering.....	61.00
Kueffel & Esser part of their voucher 35.33 for drawing material originally charged to Engineering.....	8.33

June 27th In Voucher \$869.69.

John Beckwith stamps in April & May 18.00 for News papers originally charged to Miscellaneous.....	3.18
Polk & Hubbell 1-3 office rent for April May, and June in voucher of 111,700 originally charged to Miscellaneous.....	6.00
The Tribune Company part of Voucher 10,40 advertising "Ties wanted" originally charged to Ties.....	5.20
S. M. Grunnell right of way over N. W. N. W. 32,79,25 charged originally to right of way.....	110.00
J. N. Whitmarsh damage to crop W, 1-2 S. E. 25, 79, 26 originally charged to right of way.....	10.00
E. M. Campbell, right of way over N. E. 1-4 31, 79, 25 except to school house originally charged to right of way.....	200.00
Thos Young damage to E. 1-2 S. W. N. E. 34, 79, 25 originally charged to right of way.....	115.00

July 1881. In Voucher \$4,021.12.

Mary E. Allen damage to S. E. N. W. 32, 79, 25 originally charged to right of way.....	67.50
The Tribune Co. part of voucher 3,84 advertising notice to contractors originally charged to Bridging.....	1.28
J. C. Cummins part of his voucher 128,50 for salary and expenses for June originally charged to right of way.....	85.67

July 1881. In Voucher \$5,958.23

M. E. Nutting et al Engineer corps for June part of his roll
254.00 and originally charged to Eng. 63.00

J. R. Rogers et al Engineer corps June for June part of roll
220.50 originally charged to Eng. 100.00

Short & Foreman part of their

984.38

Exhibit F. Tobin Dep.

3-31-11

A. E. M.

52

For'd. 984.38

Short & Foreman part of their voucher 9,17 Engineer Sta-
tionery originally charged to Stationary 4.50

Emly & Co. in voucher 325,52 6 N. G. switches as per invoice
originally charged to iron. 110.52

Jas. McDanough & F. B. Harvey roll 22,75 for June originally
charged to grading. 11.38

July 1881. In Voucher 6,091.64

Mrs. Sarah Day damage to S. E. 32, 79,25 & originally
charged to Right of way. 7.00

J. D. Seeberger portion of hardware bill June 298.45 origi-
nally charged to grading. 111.82

E. C. Kinney, portion of his salary & expenses for June
originally charged to Engineering. 50.00

J. D. Seeberger, portion of hardware bill June, 1881 129,72
originally charged to grading. 48.64

J. R. Rogers, portion of his expense bill of Eng. corps for
June voucher 14,49 originally charged to Engineering. 5.49

July 1881. In Voucher, 2,196.75.

Engineer M. E. Nutting et al 1-2 of June roll originally
charged to Engineering. 240.00

M. E. Nutting 1-2 of his expenses for party of June originally
charged to Engineering. 75.13

M. E. Nutting 1-2 of voucher 126.49 for expense of his party
June 1881 originally charged to Engineering. 63.25

July 27th, 1881. In Voucher 4995.10

James Herron right of way over Brier land and being my
damage for garden. 15.00

July 30th In Voucher 2345.21

A. J. Anderson et al damage as lessee to S. E. S. W. 27,79,
26 owned by E. Kurtz, and charged to right of way. 25.00

THE DES MOINES UNION RY. CO., ET AL.

43

August 1st in Voucher 4194,49

Stephen Adams shff Dallas Co. Comas award

S.E.S.W. 21,79,26 owned by E. Kurts	250.00
S.W.S.E. 27,79,26 owned by L. O. Reving	150.00
S.2 S.W. 26,79,26 owned by G. E. E. Wright	1200.00
S.W.S.E. 26,79,26 owned by D. Morrison	150.00
S.E.S.E. 27,79,26 owned by E. Carpenter	150.00
S.W.S.W. 25, & S.E.S.E. 26,79,26, owned by H. J. Carter ..	320.00
S.E.S.W. Sec 25,79,26 owned by Jos Carter	180.00
all in one voucher and charged to right of way	
Stephen Adams Shff fees for July 27th 1881 obtaining above right of way, and charged to right of way	56.00
E. C. Kinney portion of his salary & expense	

For'd 4,208.11

53

For'd 4,208.11

voucher 340,83 for July 1881 & charged to Engineering 100.00

C. F. Loweth etal Roll Engineers & c. for July 358,13 originally charged to Engineering 65.00

H. P. Thompson damage as lessee to W. 2 S. E. 27,79,26 owned by L. Rering originally charged to right of way 12.50

Iowa State Register portion of voucher 199,50 printing and advertising originally charged to miscellaneous 35.00

Aug. 1881 In Voucher 2916,08

D. D. Farnsworth damage S.E.N.E. 33,79,25 charged to right of way 4.00

A. R. Smalley voucher for sundry abstracts, in Dallas County on right of way 45.75

T. S. Johnson damage to orchard etc, on W 2 S.E. 25,79, 26 charged to right of way 118.00

J. M. Grinnell damage to W.2 N.W. 32,79,25 originally charged to right of way 50.00

Jas. B. Moore damage to S.E.S.E. 25,79,26 originally charged to right of way 245.00

August 1881 In Voucher 3170.00

T. R. Wilkes damage to S.W. 8.W. 27,79,26 originally charged to right of way.....	115 00
C. E. Campbell damage as lessee of W. 2 S.W. 27,79,26, and charged to right of way.....	15 00
F. V. Stowe part of his voucher 17.62 for tallow originally charged to grading.....	6 12
Nathan & Dreyfus part of 1 ejector 1,1903, 52.50 originally charged to Engineering tools.....	8 00
Geo Knapp & Co portion of voucher 7.20 Advertising for proposals and originally charged to Grading.....	1 00
L. F. Wormack, damage to S.W. 8.W. 30,79,25 originally charged to right of way.....	5 00
J. C. Cummins 1-2 of his salary and expenses, for July on right of way business and originally charged to Right of way.....	65 65
Risely & Vail 1-2 of voucher 16.50 for board of commissioners and originally charged to right of way.....	8 25
C. W. Reed board of Coms 1-2 voucher 2.00 and originally charged to right of way.....	2 50
A. C. Holmes 1-2 of voucher 24.50 for livery to Commissioners in June & July and originally charged to right of way.....	12 25
A. D. Littleton Shff Coms award to Cyrus Morris damage to N.W. 31,79,25 originally charged to right of way.....	200 00
J. N. Whitemarsh damage to crop on W. 2 S.E. 25,79,26 in addition to former amount R. of W.....	10 00

In Voucher 6351.57

J. D. Seeberger part of voucher 281.15 for

5,432 73

	\$ 5,432.73
hardware in June & July originally charged to Grading Tools.....	190.56
J. R. Rogers part of Voucher 200 expenses on Engineering originally charged to grading Tools.....	1.00
Aug 16th in Voucher 2920,62.	
J. W. Russell furnishing abstract for right of way originally charged to right of way.....	112.43
C. R. I. & P. R. R. in voucher 105 frt on 6 switches boards 8, 13 and 1, railway crossing and 4 connections—14.02 originally charged spikes.....	22.15
August 23 1881 In voucher 5031,46.	
John Graham lessee of Brier land in 28, 79, 26 damage and charged originally to right of way.....	15.00
August 26th 1881. In voucher 3530,55.	
James Herron rent of one acre ground on Brier land originally charged to right of way.....	2.00
J. R. Rogers et al Engineer corps, part of his July roll 225.00 originally charged to Engineering.....	135.00
Read Hastie & Co. part of their bill 234.75 for abstract and originally charged to right of way.....	51.00
Sept 6th In Voucher 5327,66.	
A. D. Littleton Shiffs. com's award in his voucher of 605.00 vis.,—	
N. W. 34, 79, 25 owned by M. White est.....	200.00
W. 2 S. W. N. E. 34, 79, 25 owned by Saml Young, all charged to right of way.....	75.00
Sept 7th In voucher 2470,00.	
J. R. Rogers livery hire in Aug per voucher originally charged to Engineering.....	29.37
J. R. Rogers et al Engineer corps Aug 1881 originally charged to Engineering.....	205.00
G. H. Lewis services as condemning S. 2 S. W. 28, 79, 26 Right of Way.....	25.00
Sept. 10th 1881. In Voucher 3450,55.	
T. R. North publishing appraisal notices Dallas Co. originally charged to right of way.....	36.00
J. S. Fulk, damage to Brier land in 28, 79, 26 originally charged to right of way.....	325.05
In Voucher 4067,10.	
J. S. Runella prorata share expenses voucher 165.00 going to New York etc originally charged to miscellaneous.....	25.00
For'd.....	4,935.31

	For'd.....	\$ 6,905.51
W. O. Litten 1-2 express charges & postage, voucher 9,81 originally charged to Engineering.....		4 90
C. F. Loweth et al Eng corps for Aug 517.12 part of voucher & all charged to Engineering.....		75 00
J. D. Seeberger part of his hardware bill 685.61 in August 1881 and all originally charged to grading to grading tools....		285 61
Getchell & Sons voucher for lumber 661.59 in Aug part and all charged to Bridging.....		661 59
S. B. Tuttle part of voucher 438.70 for tile etc June & July 1881 and all charged to grading.....		163 70
Polk Co. Coal Co. bill 88.95 part of same in Aug. and all originally charged to Fuel.....		28 95
G. S. Soeer, part of his 12.45 voucher in July & Aug 1881 and all charged to grading.....		5 45
L. A. Stewart part of his 12.18 voucher for oil & C. in Aug. and charged to grading.....		4 68
D. M. Packing Co. part of voucher 30.24 for Aug "Waste" and all charged to grading.....		18 00
Weaver & Maish, part of their voucher 15.00 oils and originally charged to Bridging.....		3 90
Joe Carter labor with team in Aug originally charged to grading.....		10 00
Sept 22nd. In voucher 6280.40.		
J. A. Martin et al Aug roll 703.41 we take out part of it, and all charged originally to Bridging.....		253 41
John Ribinett et al part of Aug roll 570.70 and all charged to grading.....		295 70
Carl Johnson 8, 1-2 days labor in August and all charged to grading.....		14 87
Frank Jarrett 1-2 \$7.75 drayage in July & Aug 1881 originally charged to grading.....		3 98
Eagle Iron Works, part of 84.73 vouchers Aug all originally charged to grading.....		34 73
Matt Murray et al Aug Roll part 1000.30 originally charged to grading.....		780 30
D. Sullivan 4 days in Aug while injured originally charged to grading.....		7 00
A. Rosberg et al pay roll Aug all of voucher and originally charged to grading.....		1,036 95
G. P. Hanawalt services for D. Sullivan hurt while at work and originally charged to grading.....		14 00
J. W. Carr et al Roll for Aug 1881 originally charged to grading.....		178 02
Joe T. Reynolds, et al part of pay roll 915.21 originally charged to grading.....		365 21
October 19th In Voucher 2371.04.		
E. C. Kinney part of his salary for Sept. 250.00 charged originally to Engineering.....		25 00
J. R. Rogers, et al Sept Roll Engineer account.....		32 47
Polk & Hubbell of voucher 7.00 for check book, and despatch originally charged to miscellaneous.....		1 75

THE DES MOINES UNION RY. CO., ET AL.

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For'd.....\$10,901.80

Sept. 30th In Voucher 4956.00

P Herron etal part of Aug roll 368.14 originally charged to grading.....	218.14
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Pat Crowley et al Aug roll part of 903.64 originally charged to grading.....	603.04
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October 6th. In Voucher 4930.05

Jon. Carter damage to crop account fence left open and originally charged to right of way.....	40.00
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October 22. In Voucher 6780.52.

A. Rosenberg etal, Sept Payroll originally charged to Surfacing track.....	1,122.68
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Wm. Fricker, etal 1-3 of Sept roll for wipers originally charged to Construction.....	30.00
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Matt Murry et al 1-2 Sept roll 853.61 originally charged to Construction.....	436.80
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M. A. Hill, et al 1-3 of 246.90 Sept roll originally charged to Construction.....	92.33
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John Moran etal 1-3 of 225.00 Sept roll originally charged to Construction.....	75.00
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J. A. Martin, etal 922.21 Sept roll originally charged to Construction.....	322.20
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T. R. Andrews, et al Sept roll originally charged to track-laying etc.....	81.55
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Getchell & Sons, in their voucher 1459.16 originally charged to Bridging &c. in lumber furnished in Sept.....	729.53
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Oct. 27th In Voucher 4054.61.

S. B. Tuttle voucher stone pipe for Sept originally charged to Bridging.....	215.00
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J. D. Seelinger, part of his hardware bill for Sept 208.52 originally charged to Const.....	73.00
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S. B. Tuttle, voucher stone pipe for Aug. originally charged to Bridging etc.....	117.50
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Pioneer Coal Co. for part of 20.00 for Bloeburg coal in Sept. originally charged to fuel.....	7.00
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Polk Co. Coal Co. voucher 170.00 Sept. charged to fuel.....	65.00
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L. A. Steward part of voucher 19.30 for oils in July Aug & Sept originally charged to fuel.....	6.80
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W. R. Sanders, etal Sept roll originally charged to Construction.....	174.90
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J. Reynolds, etal Eng. Fire & c. part of Sept roll originally charged to Construction.....	167.00
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D. D. Harger, etal part of Sept roll 234.50 originally charged to telegraph.....	97.94
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John Moran Roadmaster Sal for 1-2 of Oct. 50.00 out of come and originally charged to Tracklaying and surfacing....	12.50
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For'd.....\$15,650.90

	Up.....	15650.99
Dec. 7th In Voucher, 2841,70.		
Martin Flynn damage to N,2,N,2,33 and N,2,N.E. 32,79, 25 originally charged to right of way.....		
T. L. Johnson damage to W,2,S.E. 25,79,26 leased to Jordan and originally charged to right of way.....		1498.50
T. L. Johnson damage to crop W,2,S.E. 25,79,26 originally charged to right of way.....		140.00
E. C. Kinney out of his voucher, Sal. for Nov. 250.00 originally charged to Engineering.....		20.00
		25.00
Nov 12th. In Voucher 6214.48.		
J. A. Martin, etal part of 733.64 Oct roll originally charged to Bridging.....		100.00
J. A. Martin et al part of Oct. Roll 1881 424.16 originally charged to Bridging.....		200.00
Olof Frisk, etal all of Oct roll originally charged to track laying and surfacing.....		300.51
A. Rostberg, etal all of Oct roll originally charged to track laying and surfacing.....		943.28
Dec. 19th. In Voucher 2863,84.		
N. Houghton 1 hand car out of voucher 282.00 originally charged to rolling stock.....		47.00
Jno S. Polk, part of his voucher 138,89 for salary 1-4 originally charged to miscellaneous.....		34.72
H. G. Huttenlocher, 1-4 of his salary 200.00 originally charged to miscellaneous.....		50.00
Jan. 19th. In Voucher 6711,98.		
J. A. Martin etal Dec. part of roll 801,64 originally charged to Bridging.....		50.00
Feby 18th. In Voucher 4312,62.		
Aulman & Turner part of voucher 7,25 foundry work originally charged to track laying and surfacing.....		3.25
E. C. Kinney, part of his Dec. Sal, and Ex 278,40 originally charged to Engineering.....		25.00
E. C. Kinney etal part of 452,50, Jan sal, originally charged to Engineering.....		25.00
Sept. 6th. In Voucher 5327,66.		
E. C. Kinney, part of his Aug. Sal 250,00 originally charged to Engineering.....		25.00
Mch. 16th 1882. In Voucher 3566,12.		
J. J. Payne recording sundry deeds in his voucher, 38,00 originally charged to land and land damages.....		10.00
J. A. Runnells part of his expense 150,00 going to New York in Dec. 1881 originally charged to missel.....		33.00
For'd.....		19,181.25

For'd..... 19,181.25

April 7th 1882. In Voucher 2245,33.

Chriss Barr right of way voucher N.E.N.W. 32,79,85, Polk County.....	20.00
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In Voucher 3099,16.

Farrow Bros for 13476 ft Pine plank originally charged to Bridging.....	283.00
C. R. I. & P. Frt on 4 piling.....	96.72
E. C. Kinney part of his voucher, Engineering Oct.....	25.00
C. F. Loweth, etal part of his Oct. Roll Engineering.....	50.00

Division of work done by Martin Flynn being the grading from Clive to Waukee, 57388 Cu yds Earthwork at 24 cents.	13,773.12
3, 1-4 acres clearing at \$20.....	65.00

Division of work done by Raymond & Campbell being the
Bridging from Clive to Waukee.

3512 ft Piling at 48 ct.....	1,685.76
646 ft B. M. Oak at \$42.....	27.13
57161 ft B. M. Pine at 34,00.....	1,943.47
9775 pounds wrought iron at 5, 1-4 cts.....	513.19
1184 pounds Cast iron at 5 ct.....	59.20

Division of Iron & Ties &c. from Clive to Waukee, 8,1-3 miles.
448,25 tons rails 958720#.

Freight on same E. St. Louis to Des Moines.....	1,344.75
30710 pounds splices, bars, at 2,25.....	690.98
6134 pounds splices Bolts at \$4.50.....	276.03
Freight on same from Springfield to Des Moines 18,3-4.....	69.08
36812 pounds spikes at \$2.85.....	1,049.14
Freight on same Chicago to Des Moines15 ct.....	55.21
22490 Ties at 25 ct.....	5,622.50
630 Bridge Ties at 48 ct.....	302.40
Freight on same from Missouri to Des Moines.....	1,867.60

Division of repairs, on Rolling stock from Clive to Des Moines.....	409.40
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Division of Telegraph Poles, wire and Freight Clive to Waukee 8,15 miles.....	447.25
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Total.....	\$49,857.18
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CR.

By 4500 ties borrowed at 25 ct.....	1125.00
purchased by Wabash St L. & P. and intended for line west of Waukee.	
Also Freight on same.....	358.80

It was estimated that fastenings actually purchased by Genl Dodge would lay 43 miles. The road Clive to Boone including siding etc, is 37.53 showing that line Des Moines to Waukee. Should be charged with 5.47 miles. In the statement prepared it is shown that line Des Moines to Waukee was charged with fastenings for 19.09 miles showing over charge to that line of 13.62 miles which is adjusted with the following deductions.

48769# splices at \$2.25.....	1097.30
10896 Nuts and bolts at \$4.50.....	490.32
Freight on same from Springfield to Des Moines.....	178.60
61971 Spikes at \$2.85.....	1766.17
Freight on same from Chicago to Des Moines.....	92.95

It was also found that the fastenings actually purchased would not lay 43 miles, but were short the following:—

20000 splices, at \$2.25.....	450.00
12600 Nuts and bolts at \$4.50.....	567.00
Freight from Springfield on same.....	73.57
Total Cr.....	\$6199.71

Note

Genl Dodge furnished fastenings for line Des M. to Waukee and charged for them, but as shown above he could not have had enough to have laid that line and also completed Clive to Beene and did actually borrow from fastenings intended for line west of Waukee enough to complete his own line, viz, 13.62 miles.

CLIVE TO WAUKEE.

Total charges.....	\$49857.18
Cr by Wabash.....	6199.71
Balance.....	43657.47

We hereby certify that the foregoing is a correct exhibit of expenditures by Genl. G. M. Dodge, on account of Narrow Gauge railroad between towns of Clive & Waukee, Iowa.

E. C. Kinney,
Chf. Eng.
F. M. Hubbell,
Prest Const. Co.

60 I hereby certify that I have examined the foregoing statement in connection with the accounts and vouchers pertaining thereto and believe the same to be correct.

MORRIS TRUMBULL,
Asst. Auditor, W. S. L. & P. Ry. Co.

May 30, 1882.

Cost of the St. Louis, Des Moines & Northern Railway from
Des Moines to Clive.

June 7th, 1881, in Voucher 1.149.73.

Part of M. E. Nutting et al Engineer Corps April of 155.66 and originally charged to Engineering.....	120.66
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M. E. Nutting part of his expenses of \$42.20 for board of his party in April 1st charged to Engineering.....	31.70
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Part of E. C. Kinney Salary, expenses for April of 338.60 originally charged to Engineering.....	169.34
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Short & Foreman, part of their voucher of \$17.50 for field books and originally charged to Stationery.....	5.00
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Geo. Giteens part of his \$36.42 voucher for April Expense of Engineer corps originally charged to Engineering.....	20.92
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H. D. Thompson 1-4 of his expenses to Delphi, Ind., to examine iron, etc., originally charged to rolling stock.....	12.21
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June 1st. In Voucher \$2,104.49

M. E. Nutting part of his voucher for \$244.15 for Board of his Engineer corps for May and originally charged to Engineering.....	61.00
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E. C. Kinney part of his salary and expenses voucher of \$368.01 for May and originally charged to Engineering.....	85.00
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Charles F. Lowoth part of his voucher of \$92.18 salary 22 days in May originally charged to Engineering.....	46.18
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Keuffel & Esser part of their voucher for \$35.33 for drawing material and originally charged to engineering.....	8.00
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June 27th, in Voucher \$8,869.60

John Beckwith P. M. Stamps in April and May for newspapers originally charged to miscellaneous.....	3.17
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Polk & Hubbell 1-3 office rent for April, May & June 1881 in voucher \$111.70 originally charged to miscellaneous.....	6.00
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The Tribune Co. 1-2 of voucher \$10.40 advertising ties wanted and originally charged to ties.....	5.20
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A. H. Crim damage to S.W.S.E. 35, 79,25 originally charged to right of way.....	125.00
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E. D. Cox, damage to N.W.N.E.E 2 N.W. 3,78,25 originally charged to right of way.....	90.00
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J. H. Byers damage to S.E. S.W. 12 78 25 originally charged to right of way.....	200.00
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Ford.....	989.38
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Exhibit G. Tobin Dep

3-31-11

A. E. M.

	For'd.....	989.38
July 1881, in Voucher 4,021.12		
Tribune Co., Chicago part of their voucher 3.84 originally charged to bridging.....		1.28
J. C. Cummins, part of his voucher 128.50 for sly expense as right of way agent, originally charged to right of way for June.....		42.83
July 1881, in Voucher 4,583.71		
A. D. Littleton, Shff Com award damage to Wm. Holroys leasehold in lot 9 O. P. 7, 78 24 Polk Co. originally charged to right of way.....		50.00
A. D. Littleton Shff Com award damage to lot 10 O. P. Sec 7, 78, 24, owned by J. M. Dorr originally charged to right of way.....		880.00
A. D. Littleton Shff Com award, damage to D. M. File Works, interest in Lot 10 O. P. 7, 78, 24 originally charged to right of way.....		1500.00
A. D. Littleton Shff Com award as damage to lot 9, O. P. 7, 78, 24, owned by B. E. Haines, originally charged to right of way.....		1150.00
July, in Voucher 5,958.26		
Polk & Hubbell right of way over N.E.N.E. 3, 78, 25, originally charged to right of way.....		112.50
R. M. Taft, right of way over S.W.N.E. S.W.12, 78, 25, damage to crops, right of way.....		100.00
M. E. Nutting part of his engineer corps, for June in Voucher 254.000 originally charged to Engineering.....		60.00
J. R. Rogers, et al engineering corps part of June roll 220.50 originally charged to Engineering.....		100.00
Emloy & Co. in Voucher 8,325.52 for L. 14' 49" crossing originally charged to iron.....		215.00
Jas T. Reynolds, et al, Eng. Fire & Wipe, part of roll June 90.32 and originally charged to grading.....		45.16
Jas McDonough & F. B. Harvey roll 22.75 June originally charged to grading.....		11.37
John Moran et al, part of June roll 139.00 originally charged to grading.....		69.50
Jas McWilliams, et al June roll 432.22 originally charged to grading.....		216.11
Frank Galliger, et al, part of June roll 403.10 and was originally charged to grading.....		201.55
A. Neilson et al part of June roll 533.72 and was originally charged to grading.....		266.86
Henry Sunland et al part of June roll 326.43 and originally charged to grading.....		163.42
J. Horton et al, part of June roll 591.32 and was originally charged to grading.....		295.66
Barney McCurne, et al part of Roll June 396.60 originally charged to grading.....		198.30
	For'd.....	6,668.92

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For'd..... \$6,068.29

July 1881 in Voucher 6091.64

A. D. Littleton, Shff Com. award W 2 S.W. 35,79,25 owned by Louis F. Webb originally charged to right of way. 300.00

A. D. Littleton Shff Com. award E. 2 S.W. 35,79,25 owned by W. J. Webb and originally charged to right of way. 500.00

T. E. Brown so much of O. P. 9 Gov. Lot 1 & 2 in Sec 13, 78, 25 as lies within 50 feet of center of Main track & c originally charged to right of way. 200.00

L. P. Wilcox damage to S.E.N.E. 3,78,25 originally charged to right of way. 400.00

A. D. Littleton Shff Com. award on W 2 S.W.S.E. 12, 78, 25, owned by Rashworth. 175.00

N.W.S.W. 12, 78, 25 owned by Shaw est. 440.00

N.E.S.W.S.E. 11,78,25 owned by P. Bennett. 60.00

S.E.N.E. 11, 78, 25 owned by D. Lamont. 500.00

S.W.N.E.11 and N.W. N.E. of 11 & N.E. N.W. of 11, all in 78,25, owned by D. B. Murrow. 650.00

S.E.S.W. 2,78,25 damage to school house. 25.00
all originally charged to right of way.

J. D. Seeberger portion of voucher for hardware in June 1881 298.45 originally charged to grading. 111.82

J. D. Seeberger portion of voucher for hardware in June 1881 129.72 originally charged to grading. 48.65

Tom Braden portion of half voucher 26.00 for railway plows, originally charged to grading. 13.00

L. A. Stewart 1-3 of voucher 45.41 for oils and tallow in June originally charged to grading. 15.30

Warner & Carrother 1-2 of June voucher 52.14 for plumbing, etc., originally charged to grading. 26.07

E. C. Kinney portion of his salary & expense for June originally charged to Engineering. 50.00

J. R. Rogers part of his expense for June of engineer party voucher 14.49 originally charged to Engineering. 6.00

July 1881 in Voucher 2196.75

A. D. Littleton, Shff Com. award for right of way Lot M, of Sub D. J. T. Wheeler's est. owned by S. H. & H. E. Lewis and being part of N.W.N.E. 3,78,25. 500.00

S.W.N.W. 2,78,25 owned by J. A. Goodhue. 20.00

N.W.S.W. 2,78,25 owned by Roshworth. 325.00

S.W. 2,78,25, owned by A. Clegg. 435.00

Lot 16 O.P.S.W. 7,78,24 owned by Martin Welker. 160.00

all charged to right of way.

Aug. 1st 1881 in Voucher 4194.49.

E. C. Kinney portion of his expenses and salary voucher 340.83 July originally charged to Engineering. 50.00

For'd..... 11,679.76

	For'd.....	11,679.76
C. F. Loweth, portion of his engineer roll, July 357.13 and originally charged to Engineering.....		60.00
Ia. State Register portion of Voucher 199.50 for printing and advertising originally charged to miscellaneous.....		35.00
Aug. 1881. In Voucher 3170.90		
F. V. Stowe part of voucher 17.62 for tallow and charged to grading.....		5.50
Nathan & Dreyfus, part of one I Jector II 1903 voucher of \$52.50 originally charged to Engineering Tools.....		8.00
Geo. Knapp and Co. part of voucher 7.20 for advertising for proposals originally charged to Grading.....		1.60
J. C. Cummins 1-2 of his salary & expense for July on right of way & charged to right of way.....		65.65
Risely & Vail 1-2 of Board for Commissioners and charged to right of way.....		8.25
C. W. Reeds Board of Commissioners 1-2 voucher 5.00 and originally charged to right of way.....		2.50
A. C. Holmes 1-2 of livery hire for Commissioners of voucher for 24.60 and originally charged to right of way.....		12.25
Aug. 12th, 1881 in Voucher 6351.57		
A. D. Littleton Shff Com. award in his voucher 927.50 to P. Mattes leasehold in S.E.N.W.11,78,25 and owned by D. Lamont and originally charged to right of way.....		75.00
J. D. Seeberger, part of hard are bill June and July 581.15 originally charged to grading tolls.....		190.55
Polk Co. Coal Co. 1-2 of voucher 60.15 for coal in June, July and Aug. originally charged to Fuel.....		34.56
Getchell & Sons 1-2 of lumber Bill 453.40 July and originally charged to Bridging.....		226.70
J. R. Roger, part of voucher 2.60 Engineers Ex. and originally charged to grading.....		1.00
Pioneer Coal Co. in Voucher 20.80—1,000 Blossburg coal originally charged to Fuel.....		5.00
Aug. 16th, 1881. In Voucher 3020.62		
P. Mattes cost vs. R. R. Co. on taking right of way and charged to miscellaneous.....		4.25
C. R. Merrill 1-2 of his Blacksmith Bill June & July 21.85 originally charged to Grading.....		10.93
G. W. Harvey use of plow 10 days in July 1881 and originally charged to grading.....		2.50
J. T. Reynolds, et al, 1-2 of July 1881 roll and was originally charged to Grading.....		509.32
D. P. Shegret 1-2 of July Roll 22.62 originally charged to grading.....		11.31
	For'd.....	12,949.63
Chas. Newbust, et al 1-2 of July roll and was		

	For'd.....	12,949.63
originally charged to grading.....		278.87
Aug. 23rd, 1881, in Voucher 6544.68		
Fred Johnson et al 1-2 of roll July 1881 66.50 originally charged to grading.....		33.25
P. McGuire, et al 1-2 of July roll 515.03 and originally charged to Grading.....		257.52
H. M. Trow et al 1-2 of July roll 654.95 originally charged to Grading.....		327.48
O. Tedrow, et al 1-2 of July roll 712.05 and was originally charged to Grading.....		356.03
A. Rosberg et al 1-2 July roll 216.47 and was originally charged to grading.....		108.23
John Robnett et al 1-2 of Roll July 446.02 and originally charged to Grading.....		223.01
J. P. Henning 1-2 of July roll \$607.35 and was charged to grading.....		303.68
Matt Murry, et al 1-2 of July roll 803.70 originally charged to grading.....		401.85
Ryan Norman et al 1-2 of July roll 920.23 originally charged to grading.....		460.12
Frank Galliger et al 1-2 of July roll 920.72 originally charged to grading.....		460.36
Jerry Sullivan et al 1-2 of July roll 207.72 originally charged to Grading.....		103.86
Aug. 26th in Voucher 3550.55		
Tom Braden in his voucher 57.00 July for 1.10" R. R. Plow originally charged to grading tool.....		27.00
P. F. Morrissey, one cow killed by train west of City limits originally charged to Miscell.....		45.00
J. R. Rogers et al part of his July pay roll, 225.00 for engineer corps charged originally to Engineering.....		90.00
Read Hastie & Co. Part of their voucher 216.75 for abstracts and originally charged to right of way.....		71.25
Sept. 6th in voucher 5327.66		
A. D. Littleton Shff Com. award in voucher 005 S. W. S. E. 12,78,25 owned by D. Wright heirs.....		25.00
S. W. S. E. 12,78,25 owned by H. Fagan heirs.....		25.00
O. P. lot 12 N. E. S. W. 7,28,24 owned by Joseph Knotts.....		20.00
all originally charged to right of way		
	For'd.....	16,567.14

	For'd	16,567.14
J. S. Runnells pro rata share expense voucher 165.00 to N. Y. etc. originally charged to Miscellaneous		24 00
W. O. Litten 1-2 of his voucher 9.81 for express charges and postage originally charged to engineering		4 91
C. F. Loweth et al engineer corps Aug part of roll 517.12 originally charged to engineering		75 00
J. D. Seeberger part of Voucher 695.01 for hardware in Aug. and all originally charged to grading tolls		250 00
H. F. Getchell & Sons voucher lumber in Aug. 881.50 originally charged to bridging (This is part)		380 00
S. B. Tuttle, part of voucher 438.70 for tile in June and July 1881 and all originally charged to Grading		175 00
Polk Co. Coal part of voucher 88.95 for Aug. and all originally charged to Fuel		25 00
G. S. Smeer, part of his 12.45 voucher in July & Aug. and all originally charged to grading		4 00
L. A. Stewart part of his 12.18 bill for oils in Aug. and all originally charged to grading		4 50
D. M. Packing Co. part of voucher for waste 30.24 originally charged to grading		8 00
Weaver and Maish part of voucher 15.00 in Aug. for oils and Co. originally charged to Bridging		3 90
Sept. 22nd, 1881 In Voucher 6280.40		
J. A. Martin et al Aug. Payroll and all charged to bridging 703.41. We charged out of it		225 00
John Robinett et al pay roll Aug. part of 570.70 all originally charged to grading		275 00
Eagle iron works, part of voucher 84.73 Aug. and all charged to Grading		25 00
C. R. I. & P. R. R. Frt. on 1 R. R. crossing and 1 ball step chains all originally charged to iron		13 08
Emloy Co. 1 R. R. crossing 36' 30" &c. originally charged to grading		234 07
H. N. Trow, et al. roll for Aug. and originally charged to grading		872 55
J. T. Reynolds et al part of Aug. pay roll 915.21 originally charged to grading		350 00
Oct. 19th In voucher 2371.04		
E. C. Kinney part of his Sept. Sal Eng. 250.00		25 00
Polk & Hubbell of voucher for 7.00 for check Books and dispatch originally charged to Miscellaneous		1 75
Sept. 30th. In voucher 4856.00		
H. E. Lewis, et al Bal of damage to the J. T. Wheeler est. in Sec. 3,78,25 originally charged to right of way		50 00
		<hr/>
		19,502 90

THE DES MOINES UNION RY. CO., ET AL.

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67	Ford.....	\$19,592.90
	P. Herman et al part of Aug. Pay roll 368.14 and originally charged to Grading.....	150.00
	P. Crowley, etal part of Aug. Roll 903.04 and originally charged to Grading.....	300.00
	J. Klinger for medical services paid Dr. Hanawalt injured while in service of Co. originally charged to Grading.....	5.00
	G. W. Collins etal Aug. Pay roll on fences and originally charged to Bridging etc.....	206.72
	Oct 6th. 1N Voucher 4830.05.	
	J. J. Payne 1-2 of his voucher 48.00 recorders fees originally charged to right of way.....	24.00
	Jos. Groves 28 days time while disabled and for board and attendance originally charged to Miscellaneous.....	93.00
	Oct. 22. In Voucher 6789.52.	
	W. Fricker et al 1-3 of Pay roll Sept. "Wipers" originally charged to Construction.....	30.00
	Matt Murry et al 1-2 of 853.61 Sept Roll originally charged to Construction.....	426.81
	G. W. Collins, et al Sept. 1881 all of same & originally charged to Construction.....	159.23
	S. P. Johnson C. Eckman work in Sept. 1881 originally charged to Construction.....	18.50
	W. A. Hill et al 1-3 of 246.99 Sept roll and originally charged to Construction.....	82.33
	John Moran et al 1-3 of 225 Sept roll originally charged to Construction.....	75.00
	J. A. Martin et al part of 922.21 Sept roll originally charged to Construction.....	300.00
	Chas. Swanson et al Sept roll originally charged to Track-laying and Surfacing.....	261.12
	Getchell & Sons, part of their voucher 1459.16 for lumber in Sept 1881 and originally charged to Bridging.....	729.53
	Oct. 27th, 1881. In Voucher 4,954.61.	
	J. D. Seeburger part of his voucher for hardware in Sept 208.52 originally charged to Construction.....	70.00
	Pioneer Coal Co. part of 20.00 voucher for Blossburg Coal originally charged to Fuel.....	7.00
	Polk Co. Coal Co. part of voucher 170.70 for coal in Sept. and originally charged to fuel.....	55.00
	L. A. Stewart part of voucher 19.30 for oils originally charged to Fuel in July and Aug. & Sept.....	6.00
	O. Sund et al tracklaying Sept Roll and originally charged to Tracklaying.....	784.99
	J. T. Reynolds, etal Eng. Fire etc. part of Sept. roll 467, originally charged to Construction.....	150.00
	Ford.....	\$23,617.15

	Ford.....	\$23,617 15
D. D. Harger et al part of Sept roll 234.30 originally charged to Telegraph Construction.....		97 94
Nov. 21st. In Voucher 2996/87.		
Thos Flynn damage to 34, 79, 25 for right of way and depot grounds and charged to Right of Way.....		549 00
Fairbanks Morse & Co. 1 tank 1 set of fixtures 1 pump and 11-00 tower all in voucher of 805.00 originally charged to Water Stations.....		225 00
John Moran Roadmaster out of his 20.00 voucher originally charged to Tracklaying, and Surfacing.....		12 30
Nelson & Wherry Building depot at Clive originally charged to Traffic Stations and Warehouses.....		565 00
Nov. 30th. In Voucher 1213,25.		
J. D. Seeberger part of voucher 434.55 for hardware in Oct. originally charged to Fencing Bridging etc.....		30 00
Mary Shaw 1 cow killed in Oct and originally charged to miscellaneous.....		35 00
Getchell & Sons, in their voucher 1162.73 for lumber in Oct. for Tank and Water Station.....		290 00
Dec. 7th, 1881 In Voucher 2841,70.		
E. C. Kinney in voucher 230, for salary Nov. originally charged to Engineering.....		35 00
Nov. 30, in Voucher 6214,48.		
Conductors & Brakemen part of Oct roll 181.65 originally charged to Surfacing and Tracklaying.....		90 72
Ed. Selven et al Oct roll originally charged to Tracklaying and Surfacing.....		11 30
Chas. Swanson et al Oct. roll originally charged to Tracklaying and Surfacing.....		230 45
Chas Bwrjman et al Oct. roll originally charged to Tracklaying and Surfacing.....		240 40
Engineers & Firemen 1-3 of 311.65 Oct roll originally charged to Tracklaying and Surfacing.....		103 00
Chas Bwrjman et al Oct Roll and charged to Tracklaying and Surfacing.....		37 62
M. Hartnett et al Oct Roll originally charged to Tracklaying and Surfacing.....		210 25
J. A. Martin et al part of Oct. roll 733.84 originally charged to Building and Fixtures.....		600 00
Dec. 23rd. In Voucher 7100,90.		
Chas Bwrjman et al all of Oct. roll originally charged to Tracklaying and Surfacing.....		510 91
	Ford.....	\$27,262 06

THE 1926 MOINEB UNION RY. CO., ET AL.

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	Food	\$37,280.00
J. A. Martin et al part of his Oct. \$32.48 originally charged to Cattle Goods and Crossings.....		72.00
Dec. 19th, In Voucher 2863.48.		
M. Houghton voucher 292, one hand car originally charged to Rolling stock.....		47.00
J. S. Polk part of his voucher 128.80 salary 1-4 originally charged to miscellaneous.....		34.72
G. H. Huttenlocher 1-4 of his salary \$200, originally charged to miscellaneous.....		50.00
W. Langdon Material and Framing Clive Depot and platform originally charged to Traffic Station and Warehouses.....		625.00
January 18th, 1902. In Voucher 513.40.		
G. Howe Recorder Dallas County recorders fees in voucher 28.19 originally charged to right of way.....		16.30
January 19th, 1902. In Voucher 6711.96.		
M. Hartnett et al Surfacing Dec 1881 West of Des Moines originally charged to Surfacing.....		292.37
J. A. Martin et al part of his roll 801.64 originally charged to Fencing..Dec.....		50.00
Chas Berkman et al Dec. 1881 roll originally charged to Tracklaying and Surfacing.....		500.07
January 20th, In Voucher 2105.89.		
R. M. Alexander part of his voucher 14.62 painting Section house at Clive originally charged to Building & T.....		7.31
L. P. Wilson, 2 loads of straw for tanks and well at Clive originally charged to Water Stations.....		3.50
February 18th, In Voucher 4512.62.		
Aulman & Turner part of Voucher 7.25 foundry Work originally charged to Tracklaying and Surfacing.....		2.00
Chicago Lumber Co. part of 73,31 000' plain paper for Clive Station originally charged to Traffic Stations & Warehouses.....		19.50
Chicago Lumber Co. part of 43,33 Lumber in Dec. for Clive tank originally charged to Water Stations.....		18.23
Getchell & Sons in voucher 238.75 Dec. for 74' Tar felt for tank originally charged to Water Stations.....		2.50
Warner & Carrother Plumbing Goods for Water Tank originally charged to Water Stations.....		39.54
J. Pollard damage as leasehold on Dorr place charged to Right of Way.....		15.00
E. C. Kinney part of his salary & expenses for 278.40 originally charged to Engineering.....		25.00
	Ford.....	\$39,396.22

	Paid.....	\$39,226.22
Fairbanks Morse & Co. 5 days time for man at Clive task and ex originally charged to Water Stations.....		27.22
E. C. Kinney et al Jan Salary part of \$32.30 originally charged to Engineering.....		35.00
Sept. 6th In Voucher 5327.06.		
E. C. Kinney part of his voucher Aug. Sal. 250.00 originally charged to Engineering.....		35.00
March 16th, 1892. In Voucher 2246.12.		
P. Bennett Right of way N.E.S.E. 11,78.25 originally charged to Right of way.....		56.00
J. J. Payne, Recording sundry deeds in his voucher 20.00 originally charged to Right of way.....		6.75
J. D. Secherger, part of his \$3.76 voucher for hardware originally charged to Water Stations.....		17.43
In Voucher 2089.16		
Part of J. S. Rumlle Expense voucher 100, to N. Y. originally charged to miscellaneous.....		20.00
Frank Perry Salary for Oct. originally charged to miscellaneous.....		25.00
E. C. Kinney part of his Oct. voucher 272.50 originally charged to Engineering.....		35.00
C. F. Loweth et al part of Oct. Pay roll.....		30.00
Division of work done by Martin Flynn, being grading etc from Des Moines to Clive,		
19678 Cu yds earthwork at 24 ct.....		4,794.72
750 ft grubbing.... at 10.00 per 100'.....		75.00
3,17-72 acres clearing at 20.00.....		64.72
Division of Earthwork done by Raymond & Campbell and being the Bridging from Des Moines to Clive		
2175 ft piling at 48 ct.....		1,050.00
783 ft B. M. Oak at 42.00.....		328.86
69062 ft B. M. Pine at 34.00.....		2,346.14
2027, pounds of wrought iron at 5,1-4 cts.....		206.17
1342 pounds cast iron at 5 cts.....		67.10
Distribution of Iron Ties etc, from Des Moines to Clive,		
5.46 miles		
204,2-10 tons rails 631080'.....		
Freight on same from E. St. Louis to Des Moines.....		914.10
20200 pounds spikes bars at 2.25.....		454.50
4000 pounds Bolts at 4.50.....		181.00
Freight on same from Springfield to D. M.....		45.45
24316 pounds spikes at 2.65.....		642.36
Freight on same Chicago to Des Moines.....		36.32
14730 Ties at 25 ct.....		3,682.50
500 Bridge ties at 48 ct.....		240.00
Freight on same from Missouri to Des Moines.....		1,235.10
Paid.....		\$40,964.29

THE DES MOINES UNION RY. CO., ET AL.

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71	Ford.....	\$46,064.29
	Division of Repairs on Rolling Stock from Des Moines to Clive.....	406.46
	Division of Telegraph material Des Moines to Clive on poles Wire, and Frt. 5.1-9 miles.....	302.30
	TOTAL.....	\$46,773.05

We hereby certify that the foregoing is a correct exhibit of expenditures by Genl G. M. Dodge, on account of track structures and other improvements on account of Narrow Gauge railroad between city limits of Des Moines and Town of Clive Iowa.

E. C. Kinney,
Chief Engineer.
F. M. Hubbell,
Pres. Const Co.

I hereby certify that I have examined the foregoing statement in connection with the accounts and vouchers pertaining thereto and believe the same to be correct.

Morris Trumbull,

May 30th. 1882.

Asst Auditor, W. & L. P. Ry. Co.

72 STATEMENT OF EXPENDITURES BY GENL. G. M. DODGE ON ACCOUNT OF BUILDINGS TRACKS, ETC. IN DES MOINES.

In voucher, 1,149.73 June 7th, 1881, part of M. E. Nutting et al Engineer corps, of \$155.66 & originally charged to engineering, April roll.....	\$35.00
Part of M. E. Nutting voucher of \$42.20 for boarding his party in April, 1881, originally charged to engineering.....	10 50
Part of E. C. Kinney voucher of \$338.60 for salary and expenses in April originally charged to Engineering.....	56 40
Short and Foreman part of their voucher of \$17.50 for field books originally charged to Engineering tools.....	2 50
Mills & Abdill for Engineers supplies per voucher and was originally charged to Stationary.....	14.35
Geo. Githens, part of his \$36.42 voucher originally charged to Civil Engineering being April Ex of corps.....	7 50
H. D. Thompson, 1-4 of his expenses to Delphi, Ind. to examine iron, etc. originally charged to Rolling stock.....	12 21
June 1st in voucher 2104.49 E. C. Kinney part of his salary and expenses, voucher 368.01 for May, 1881, and originally charged to Engineering.....	25 00
Chas. F. Loweth part of his voucher 92.18 for 22 days salary in May, originally charged to Engineering.....	25 00
Keuffel & Essex part of their voucher of 35.33 for drawing material in May originally charged to Engineering.....	3 00
Chas. Sengfelter voucher painting and lettering two signs...	5 00
L. Robinson for drop light and other plumbing material, originally charged to Engineering.....	7 00
June 27th In Voucher 8859.69 Frank H. Perry, Clerk hire for April & May attending right of way and other business, Des Moines originally charged to Miscellaneous.....	50 00
Polk & Hubbell part of office rent April, May & June, 1881, in voucher 111.70 originally charged to Miscellaneous.....	6.00
J. U. Wyst lot 7 & fr lot 8 Keene & Poindexters addition and fr lot 8 in 22 Hoxies Add subject to right of way of C. R. I. & P. R. R. and originally charged to right of way.....	1900 00
Amt. paid for damage to O'P' lot N. E. 8, 78, 24 owned by J. C. Savery et al originally charged to right of way.....	1950 00
July, 1881 In Voucher 4021.12 Commissioners fees paid A. D. Littleton Shff., originally charged to right of way.....	120 00
T. E. Browns strip of ground 50 feet wide off south side lot 1 O'PN. 1-2 N. E. 8, 78, 24 originally charged to right of way....	1200 00
Frank Perry for June originally charged to Miscel.....	25 00
T. E. Brown, for O. P. Lot 5 in N. E. 1-4 8 & O. P. lot 13 in N. W. 9 all 78, 24 originally charged to right of way.....	1800 00
July, 1881 In voucher 5958.23 M. E. Nutting et al Eng. Corps June, 1881 part of his role 254, originally charged to grading...	63 00
J. R. Rogers et al Engineers corps of June part of roll	
Forward.....	7315.46

Exhibit H. Tobin Dep.

3-31-11

A. E. M.

THE DES MOINES UNION RY. CO., ET AL.

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	Ford.....	7,315.46
220.50 originally charged to Engineering.....		20.50
Jas T. Reynolds, etal Eng. Fire & Wipes for June 1881 Part of roll 90.32 & Originally charged to grading.....		45.16
A. Hess voucher moving telegraph poles near Allens Hill originally charged to Grading.....		3.00
John Moran etal Roadmaster part of June roll 139, Originally charged to Grading.....		69.50
Jas. McWilliams part of June roll 432.22 & was originally charged to Grading.....		216.11
Frank Gallagher etal part of June roll 403.10 & originally charged to Grading.....		201.55
A. Nelson etal part of June roll 533.72 and originally charged to Grading.....		266.86
Henry Sunland etal part of June roll 326.43 & originally charged to Grading.....		163.41
J. Horton etal part of June roll 591.32 and originally charged to Grading.....		295.66
Barney McCurne etal part of June roll 396.60 and originally charged to Grading.....		198.30
July In voucher \$6091.64.		
J. D. Seeberger part of hardware voucher 298.45 For June, 1881 originally charged to Grading.....		74.81
J. D. Seeberger hardware voucher 129.72 for (part) June originally charged to Grading.....		32.43
Tom Braden, one Railway plow in voucher 26, originally charged to Grading.....		13.00
H. F. Getchell & Sons lumber bill for June, 1881 originally charged to Bridging.....		85.93
G. S. Sneer hardware bill June originally charged to Grading.....		6.25
L. A. Stewart 2-3 voucher for oil and tallow in June originally charged to Grading.....		30.61
Pioneer Coal Co. Bill for June, 1881 originally charged to Grading.....		20.00
Warner & Carrothers 1-2 of Voucher 52,14 June for plumbing, etc. originally charged to Grading.....		26.07
C. City Gas Co. for month of June originally charged to Miscellaneous.....		1.20
E. C. Kinney portion of his salary & Expense for June, 1881 originally charged to Engineering.....		150.00
J. R. Rogers, part of his voucher 14.49 for expense of his part for June originally charged to Eng.....		3.00
L. Harbach for office furniture bot in April & May originally charged to Miscellaneous.....		46.00
	Ford.....	9,284.86

July 27th 1881 In voucher 4995,10, Sarah A. Hughes, for lot 2 of O. P. N. W. 9,78,24 deed and charged to right of way.....	9284,81
Aug. 1st 1881 In voucher 4194.49 E. C. Kinney, part of his salary & expense voucher 340,83 for July originally charged to Engineering.....	900,00
C. F. Loweth et al, Pay roll July 1881 a portion of it and originally charged to Engineering.....	25,00
Iowa State Register, portion of voucher 199,50 for painting and advertising, originally charged to Miscellaneous.....	125,00
Aug. 1881 In voucher 2916,08 Frank Perry voucher for clerk salary for July 1881 & Originally charged to Miscellaneous....	50,00
Aug. 1881 In voucher 3170,99 L. Harbach for office furniture, bot in May 1881 and charged to Engineer tolls.....	25,00
Carter & Hussey Record Book and charged originally to Miscellaneous.....	42,00
F. V. Stowe part of voucher 1762 for one barrel tallow, originally charged to grading.....	1,85
Aug. 12 1882 In voucher 6351,57 E. J. Adams & Co. deed for lots 1 and 2 in block 22 Hoxies addition originally charged to right of way.....	6,00
Warner & Carrother for 9,1-2 feet iron pipe & C. originally charged to grading.....	1515,55
Eagle Iron Works, 1 cast tongs Iron 40 lbs. 3,1-2 & in their voucher 7,33 (first lien) originally charged to grading.....	1,77
Cap City Gas Co. gas for mo. of July 1881 and charged originally to fuel.....	1,40
J. D. Seeberger, part of voucher 581,15 for hardware in June & July originally charged to grading tools.....	90
Polk County Coal Co. 1-2 of coal bill June, July & August 69,15 originally charged to fuel.....	200,00
H. F. Getchell & Sons, 1-2 of their lumber bill 453,40 July originally charged to Bridging.....	34,55
Pioneer Coal Company in voucher 20,80 July 3160, Blossburg Coal originally charged to fuel.....	226,70
Aug. 16 1881 In voucher 3920,62 F. E. Buck M. D. Services for man hurt and while and originally charged to miscellaneous.....	15,80
C. R. Merrill part (1-2) of his blacksmith bill 21,85 for June, July & August & originally charged to grading.....	5,40
Jas Jas. F. Reynolds, et al (1-2) July roll 1018,64 and originally charged to grading.....	10,92
Jas. F. Reynolds, et al	509,32
D. P. Stegrat 1-2 of July roll 22,32 originally charged to grading.....	
Chas. Newcomb et al 1-2 of roll 557,73 and was originally charged to grading.....	11,31
Aug. 23 1881 In voucher 6544.68 Hattie W. Field & Husband, Deed for lot 5 in 33 of Keene & Poindexters addition originally charged to right of way.....	278,86
Fred Johnson et al 1-2 of July roll 66,50 and was originally charged to grading.....	700,00
Peter McGuire et al 1-2 of July 1881 roll & was originally charged to grading.....	33,25
H. N. Trow, et al 1-2 of roll July 1881 654,95	257,51
Ford.....	14,262,90

Up.....	14,262,90
originally charged to grading.....	327,47
O. Tedrow, et al 1-2 of July roll 712,05 and was originally charged to grading.....	356,02
A. Rostberg et al 1-2 of July roll 216,47 originally charged to grading.....	108,24
John Robinett 1-2 of July roll 446,02 & originally charged to grading.....	223,01
J. P. Hemming et al 1-2 of July roll 607,35 originally charged to grading.....	303,67
Matt Murry et al 1-2 of July roll 803,70 originally charged to grading.....	401,85
Ryan Norman et al 1-2 of July roll 920,23 originally charged to grading.....	460,11
Frank Gallagher et al 1-2 of July 920,72 originally charged to grading.....	460,36
Jerry Sullivan et al 1-2 of July roll 207,72 originally charged to grading.....	103,86
Aug. 26th in voucher 3550,55 Tom Braden in his voucher 57,00 for No. 10, 1-2 scale, originally charged to grading tools.	30,00
Read Hastie & Co. for part of their voucher 216,75 for abstract and originally charged to right of way.....	17,50
Sept. 6th 1881 in Voucher 5327,66 N. M. Hubbard lot 6 in 31 and lots 6, 7, & 8 in Block 33 Keene & Poindexters add all originally charged to right of way.....	2250,00
Sept. 7th 1881 in Voucher 2470,69 Frank H. Perry clerk hire for August originally charged to Miscellaneous.....	25,00
In voucher 84697,00. Western Telephone rental instrument August originally charged to Engineering.....	6,50
C. F. Loweth et al Engineer Corps August part of roll 517,12 originally charged to Engineering.....	60,00
J. D. Seeberger, voucher for hardware 605,01 part of same and all originally charged to grading Tools.....	150,00
Getchell & Sons, voucher for lumber 881,59 part share and all charged to Bridging for August.....	100,00
Ewing & Co. lumber in Aug 1881 per voucher originally charged to Bridging.....	54,60
S. B. Tuttle part of voucher 438,70 for tile etc in June & July all originally charged to grading.....	100,00
Polk Co. Coal Co. part voucher 88,95 for Coal in Aug. all originally charged to fuel.....	25,00
Geo. S. Sneer part of his voucher 12,45 and all originally charged to grading.....	3,00
L. Harbach voucher for office Furniture and all charged to Fuel.....	58,05
L. A. Smead part of his bill 12,18 for oils in Aug. & all charged to grading.....	3,00
Weaver & Maish part of voucher 15,60 Aug originally charged to Bridging.....	3,90
Sept. 22, in voucher 6280,40 J. A. Martin et al Aug. pay roll portion of 703,41 all charged originally to Bridging.....	225,00

Ford..... 20,119,04

	20,119.04
Frank Jarrett 1-2 drayage 7.75 in July & Aug. and originally charged to grading.....	3.87
Eagle Iron Works, part of voucher 84.73 in Aug. and all charged originally to grading.....	25.00
Matt Murray et al Aug. roll part of 1000.30 originally charged to grading.....	300.00
Albert Chase et al Pay roll for Aug. 1881 originally charged to grading.....	111.06
J. T. Reynolds, et al Trainmen & Machinests &c. Aug. pay roll and part of 915.21 originally charged to grading.....	200.00
Oct. 19th in voucher 2371.04 E. C. Kinney part of his salary as Engineer charged to Engineering for Sept.....	25.00
P. L. Rice, labor in July originally charged to grading....	7.16
A. C. McFarland, balance labor in July 1881 originally charged to grading.....	4.77
Frank Jarrett draying in Sept & originally charged to grading.....	5.50
Polk & Hubbell, of voucher for 7.00 check book and despatch & originally charged to miscellaneous.....	1.75
Louis Hengst 2,1-2 days drafting in Oct. originally charged to Engineering.....	7.00
Sept. 30th in voucher 4856.09. Oliver Tedrow, et al Aug. Payroll originally charged to grading.....	960.14
Clarence Waltz et al Aug. Payroll originally charged to grading.....	654.19
Oct. 6th in voucher 4830.05 Frank H. Perry Sept. salary Clerk originally charged to miscel.....	25.00
Oct. 22nd in voucher 6789.52 Wm Fricker et al Sept. Payroll wipers, 1-3 originally charged to Construction.....	30.00
John Robinette, et al 1-2 of 555.01 Sept. Roll originally charged to Construction.....	277.51
M. A. Hills, et al, 1-3 of 246.99 Sept. Payroll originally charged to Construction.....	82.33
John Moran et al 1-3 of 225, Sept. roll originally charged to Construction.....	75.00
M. Hartnett et al Sept. roll originally charged to Construction.....	294.01
John A. Martin et al part of 922.21 Sept. roll originally charged to Construction.....	300.00
P. McGuire et al pay roll for Sept. 1881 originally charged to surfacing track.....	623.43
Chas. Newlon et al Sept. roll originally charged to track laying.....	222.60
John Elvason Labor in June in city charged originally to grading.....	22.75
Oct. 27th. in voucher 4954.61 N. S. McDonnell & Co voucher of 95.15,1 wrought iron forge for blacksmith ac. const.....	18.44
J. D. Seeberger hardware bill 208.52 in Sept. part of same & all originally charged Construction.....	65.00
Ford.....	24,460.56

	Up.....	\$24,460.55
Pioneer Coal Co. part of voucher 20 for Coal in Sept. 1881 originally charged to Fuel.....		6.00
Polk Co. Coal Co. part of voucher 170,60 for coal in Sept. 1881 originally charged to Fuel.....		50.00
L. A. Stewart in voucher for 19,30 for Oils etc. in July, Aug & Sept. originally charged to Fuel.....		6.50
Warner & Carrothers Plumbing material in Sept. originally charged to Engineering.....		20.87
Mills & Abdill Stationery Bill for Sept. originally charged to Engineering.....		31.85
H. N. Trow etal Sept. Payroll and originally charged to Surfacing Track in Des Moines.....		728.75
J. T. Reynolds etal part of Sept. Roll 467,00 originally charged to Construction.....		467.00
D. D. Harger etal Telegraph Roll Sep. 234.50 originally charged to Telegraph.....		58.62
Nov. 21 in voucher 3950,07 Fairbanks Morse & Co. in Voucher 805, for one Mill originally charged to Water Stations.....		275.00
John Moran Roadmaster part of his 50, voucher originally charged to Track laying and Surfacing.....		12.50
Frank Pelton Surveying lot corner of 7th street & C. originally charged to Engineering.....		13.00
Nov. 30th in Voucher 1213,25		
J. D. Seeberger part of his voucher 434.55 for hardware in Oct. and originally charged to Bridging Track laying and Fencing etc.....		54.55
Polk County Coal Co. part of voucher 201,25 for Oct. originally charged to Fuel.....		75.00
Getchell & Sons in Voucher 1162,73 for lumber in Oct, per voucher Water stations.....		250.00
Dec. 7th In voucher 2841.70		
E. C. Kinney in voucher 250, Nov. Salary originally charged to Engineering.....		100.00
C. F. Loweth Nov. Roll part of 175, voucher, originally charged to Engineering.....		75.00
Frank Jarrett drayage for Oct. 1881 originally charged to miscellaneous.....		2.50
Western Telephone Inst. for Oct. originally charged to Miscellaneous.....		6.50
Nov. 30th in Voucher 6214.48.		
Conductors and Brakeman part 1-2 of Oct. Roll 181,45 originally charged to Tracklaying and Surfacing.....		90.73
Tom Trim et al Oct. Roll laying track in yard originally charged to Track laying and surfacing.....		108.92
John Cook & B. Thompson labor in yard Oct. originally charged to Tracklaying & Surfacing.....		21.00
MA. Hill etal 1-2 of Oct. Roll 38,40 originally charged to Track laying & Surfacing.....		19.45
Engineer & Fireman 1-3 of 311,65 Oct. Roll originally charged to Tracklaying & Surfacing.....		103.88
J. A. Martin part of Oct. Roll 733,64 originally charged to Bridging.....		100.00
M. A. Hill Oct. Roll charged to Tracklaying & S.....		293.00
John Robinett etal part of Oct. Roll 318,43 originally charged to Tracklaying & Surfacing.....		224.16

Dec. 23rd in Voucher 7.100,90

Mr. Hartnett etal all of Oct. Roll and charged to Track-laying & Surfacing.....	322.78
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Dec. 19th In Voucher 2863,84

Jno. S. Polk and one half of his voucher 138,80 for salary originally charged to Miscellaneous.....	69.45
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H. G. Huttenlocher Stenographer salary for Nov. originally charged to Miscellaneous.....	50.00
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H. G. Huttenlocher Stenographer 1-2 of his salary 200.00 originally charged to miscellaneous.....	100.00
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Jan. 19th in voucher 6711,98

J. A. Martin part of his roll 801,64 originally charged to Water Station.....	200.00
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Jany. 20th in voucher 2105,89

C. F. Loweth part of Dec. Roll 225 charged to Engineering \$100, miscellaneous \$50.....	150.00
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Feb. 18th in voucher 4312,62

Aulman & Turner part of voucher 7,25 for foundry work originally charged to Rolling Stock.....	2.00
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Western Telegraph Inst. for Dec. 1881 originally charged to Telegraph.....	3.25
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E. C. Kinney etal part of his Jany. salary originally charged to Engineering (452,50).....	262.50
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E. C. Kinney part of his Dec. Sal. & Ex. 278.40 first charged to Engineering.....	100.00
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Sept. 6th In voucher 5327,66.

E. C. Kinney part of his Aug. salary 250, originally charged to Engineering.....	25.00
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March 16th, 1882 in voucher 3566,12

Harry Elliott paid him his amount.....	750.00
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which was originally charged to Right of way.

Mrs. Knudson Board for L. Sanstrum who was hurt while on duty and originally charged to Tracklaying and Surfacing.....	19.10
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J. J. Payne, recording Hubbard Callanan and Field deeds originally charged to Right of way.....	2.25
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L. Knudson Board for L. Sanstrum, while hurt originally charged to tracklaying and Surfacing.....	17.60
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A. Sanstrum settlement for personal injuries originally charged to Tracklaying and Surfacing.....	50.00
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In Voucher \$3,009.16

Cate & Graham 4 loads, drayage originally charged to Construction.....	3.00
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E. C. Kinney part of his voucher 272,50 Oct. originally charged to Engineering.....	50.00
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C. F. Loweth etal part of his Oct. Roll Eng.....	40.00
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Division of work done by Raymond & Campbell and being the Bridging in Des Moines 288 feet piling at 48 cts.....	138.24
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79	Up.....	\$29,950.50
	4470 ft. B.M. Pine at \$34.00.....	151.98
	284 pounds of wrought iron at 5, 1-4 cts.....	14.91
	96 Pounds of cast iron at 5 cts.....	4.80
	Distribution of Iron Ties etc. in Des Moines 4 miles of track	
	283,25 tons rails at 461440 Frt. on same St. Louis to Des Moines.	849.75
	14800 splices bars at 2.25.....	311.00
	Freight on same Springfield to Des Moines 18,3-4.....	33.29
	17741# spikes at 2.85.....	505.62
	2956# splice bolts at 4.50.....	133.02
	Frt. on spikes (17741) from Chicago to Des Moines.....	26.61
	11088 ties at 25 cts.....	2772.00
	56 Bridge ties 6x8'8" at 48 ct.....	268.80
	Frt. on same from Missouri to Des Moines.....	868.25
	Division of re-pairs of rolling stock in Des Moines.....	408.46
	Division of Telegraph material for pole wire.....	
	Frt. on 1,68 miles at cost 55.00 per mile.....	92.40
		<hr/> 36,301.39

We hereby certify that the foregoing is a correct exhibit of Expenditures by Genl. G. M. Dodge on account of tracks, structures and other improvements in city limits of Des Moines made in connection with St. Louis Des Moines & Northwestern Railway.

E. C. Kinney

Chf. Eng.

F. M. Hubbell,

Pres. Const. Co.

I hereby certify that I have examined the foregoing statement in connection with the accounts and vouchers pertaining thereto and believe the same to be correct.

Morris Trumbull

Ast. Auditor W. St. L. & P. Ry.

May 30th 1882

COPY

80 Counsel for each of the complainants, while consenting to the use of copies instead of the originals and waiving the formal identification of the books and papers in the office of the Wabash Railroad Company object to the evidence as not binding upon complainants and because the original of said books and records cannot be competent or material on the issues as between the Chicago, Milwaukee & St. Paul Railway Co. and the Wabash Railroad Co., and the Des Moines Union Railway Co.

Q. Now, I call your attention to Exhibit L, Tobin Deposition, 3-31-11 and ask you whether that is the original journal voucher, No. 1750, of the Wabash, St. Louis & Pacific Railway Co.? A. Yes sir.

Q. And with certain papers attached to it?

A. Yes sir.

Q. Now, there is attached to this a memorandum in lead pencil, in whose handwriting is that memorandum?

A. I think that is James F. How's writing, our former vice president.

Q. And at the date of this journal entry he was the chief executive officer in the west of the Wabash St. Louis & Pacific Railway Co., was he not? A. Yes sir.

Q. This memorandum reads as follows, doesn't it: "The Road cost \$691,506—length of Road 48.73 length City Limits to Clive 5.38 Clive to Waukee 8.15 we to allow Gen'l Dodge the average price per mile that the road cost—on above basis as follows City Limits to Clive $\frac{1}{2}$ of 5.38 Clive to Waukee 8.15 and to charge him up with the a/c against him as per our books except that as unpaid interest on Des Moines property he is to have credit on the \$36,491.39 which he retains."

81 Counsel for complainants object to the contents of this memorandum just read as being incompetent and immaterial and not binding upon them in this action.

A. Yes sir.

Q. The last three sheets here beginning with the words, "Wabash St. Louis & Pacific Railway Company, journal entry, October 1884," of this Exhibit I. Tobin Deposition, 331-11, constitute the journal entry itself, do they not?

A. Yes sir.

Q. Now, this first entry "Sundries to Railroads, Ind. & Sundries, Genl. G. M. Dodge," is a readjustment of the account with Gen. Dodge, is it not?

Counsel for complainants make the same objection.

A. The journal voucher reads "For adjustment of construction accounts on new basis—as per statements hereto attached."

Q. Commencing with this first page that I have referred to where the journal entry itself commences where does the first journal entry stop?

A. At the foot of that page.

Q. At the foot of the first page? A. Yes sir.

Q. That is a statement of debits or credits?

A. Both.

Q. Now, which are the debit items?

A. "Construction account Des Moines, North Western R. R."

Q. What is the amount?

A. \$85,718.07; rent of property \$5,094.80; railroad vouchers \$2762.18."

Q. Are those all charges against which they are—

A. That is a credit to Gen. Dodge.

Q. And charges the Wabash Company? A. Yes sir.

Q. Now on the other page, the next page, we have the debits to this same account, that is credits to the Wabash Co. and debits to Gen. Dodge? A. Yes sir.

82 Q. Amounting in the aggregate to \$23134.23?

A. Yes sir.

Q. Then the next is "Railroads, Ind. and Sundries, Genl. G. M. Dodge, Real Estate A/C, to Rail Roads, Ind. & Sundries, Genl. G. M. Dodge. For balance at credit of former account transferred to credit of the latter account \$12,965.55;" that is another credit entry transferring this balance of \$12,965.55? A. Yes sir.

Q. Then what follows that is a summary of the condition after the entries preceding had been made?

A. Yes sir.

Q. That that I refer to ends with the words, "Credit Balance \$51,106.36?" A. Yes sir.

Q. The item that follows that, "Railroads, Ind. and Sundries, Genl. G. M. Dodge to Gen. G. M. Dodge, Ownership in Property in Des Moines," and what follows, is that the opening of a new account to which is transferred the balance derived as above stated? A. Yes sir.

Q. Now; what is the date of the entry of the opening of that new account? A. October, 1884.

Q. Now, the first page of this Exhibit I, Tobin Deposition 3-31-11 is headed, "St. Louis, November 10th, 1884;" I will call your attention to the item in the journal entry "\$114,619.42, see the statement attached hereto" is that the statement referred to?

A. That amount \$114619.42 is mentioned on the first statement.

Q. I know that, but your journal voucher says "See statement attached hereto," now that means attached to the journal voucher, doesn't it? A. Yes sir.

83 Q. And the statement attached to the journal voucher that is referred to is the one that is on the first page?

A. Yes sir.

Q. That would indicate that the entry was not in fact made until November, wouldn't it?

A. No, this first page is dated November 10th, we didn't close our books until November 30th, 1884, for the October account.

Q. You mean it would be in the October account but in fact made in November?

A. Yes sir, made in November.

Q. Now, next follows the statement headed, "St. Louis, October 1st, 1884, St. Louis, Des Moines & Nor R. R. Co.

in account with the Wabash, St. Louis & Pacific Railway Co., showing a total of \$8544.37, and following that is a statement of a similar account showing \$19.13; those are the lists attached in explanation of the items of \$8544.37 and \$19.13 in the journal voucher?

A. On the second page of the journal voucher, yes sir.

Q. And the two letters attached, one from G. M. Dodge and the other from James F. How, general agent, are papers that were filed with the journal voucher in accordance with the practice to which you have referred?

A. Yes sir, these are copies, not originals, both are marked copies.

Mr. Guernsey: I assume this copy of the journal voucher may be used in lieu of the original or in lieu of the book?

Mr. Minnis: Yes sir.

The paper referred to, Exhibit I, is in words and figures as follows, to-wit:

84 (Copy of memorandum in lead pencil attached to first page of Exhibit I, Tobin Deposition 3-31-11.)

The Road cost
\$691.506 =
length of Road 48.73

length		
	City Limits to Clive	5.38
	Clive to Waukee	8.15

we to allow Gen'l
Dodge the average price
per mile that the road
cost—on above basis as follows
City Limits to Clive $\frac{1}{2}$ of 5³⁸
Clive to Waukee 8¹⁵
and to charge him up
with the a/c against
him as per our books
except that as unpaid
interest on Des Moines
property he is to have
credit on the \$36,491.39
which he retains.

The following appears on the back of the said exhibit.

Wabash St. Louis & Pacific Ry Co
Journal Voucher,
No. 1750

Debit
Credit

\$.....

Journal Folio. Month of Oct 1884

Approved for Entry:

..... Auditor,

Exhibit I. Tobin Dep
3-31-11 A. E. M.

65

A. O. III

St. Louis, Nov. 10th, 1884.

Wabash St. Louis & Pacific R. R. Co., in Account with

General Dodge a/c St. Louis Des Moines & No. Ry.

- CREDITS -

Ry valuation of Road at 14100.56 per mile	
1/2 Road Des Moines to Clive 2.69 miles.....	38 172 00
" Clive to Waukeo 8.15 miles.....	115 653 00
" 3/4 of Interest on Expenditures in Des Moines made by Genl. Dodge, on \$36,391.20 June 1st 1882 to May 28th 1884 at 7%.....	
3/4 of \$3094.79.....	3 821 10
" Sundry Vouchers-a/c Expenses &c.....	2 702 18
	<hr/>
	160 408 94

- DEBITS -

To Cost of Rails per Explanation Below.....	114 619 42
" 1/4 of Interest on Expenditures by Wabash, St. L. & Pac. Ry. Co. on property in Des Moines to May 28th 1884.....	12 563 00
" Operating Expenses &c to May 28th 1884 per bills rendered.....	18 491 90 145 674 84

Balance in favor General Dodge 14 734 10

Note - Iron Rail a/c

Road Clive to Boone.....	37.53
1/2 Road Des Moines to Clive.....	2.69 40.22
Road Clive to Waukeo.....	8.15
Road Pandora to Fonda.....	86.40
1/2 Road Des Moines to Clive.....	2.69 97.24

137.46

Total cost of Rails laid outside of

Des Moines City limits..... \$391,735.10

Genl. Dodge's proportion..... 4022 = \$114,619.42

13746

96

A. O. III.

St. Louis, October 1st, 1884.

St. Louis, Des Moines & Nor. R. R. Co. in Account with the

Bill No.

Wabash, St. Louis & Pacific Railway Co.

Audited Bills - Sundries.		Papers Sent.		
8923	For Material furnished at D. M. Aug.	60	Sept. 16	6 32
8950	" Coal, wood & gas, July & Aug.	"	" "	49 61
8999	" Labor & Mat. at D.M., Aug.	"	" "	64 70
8728	" " " "	"	" "	65 67
10106	" Pro. Coal used Frt. Ho. & Pass. Depot, Dec.	63	July. 13	1 01
10667	" " Wages, Etc., Feby.	"	Mar. 16	76 02
10808	" " Water	"	" "	22 17
10880	" " Switching exps.	"	" "	106 23
10899	" " Wages, July.	"	" "	79 32
11018	" Labor & Material, Feby.	"	" "	54 30
11031	" " " "	"	" "	140 90
11336	" Switching expenses, Mar.	"	Apr. 13	78 27
11357	" Water	"	" "	10 00
11359	" Labor & Material	"	" "	19 64
11360	" Pro. Wages,	"	" "	151 39
11407	" Labor and Material	"	" 20	206 25
11516	" " " "	"	" "	166 62
11815	" " " Apr	"	May 14	219 25
11840	" Pro. Wages,	"	" 21	155 01
11841	" " " "	"	June 9	63 86
12066	" " " May	"	" "	111 14
12109	" " " "	"	" 21	106 95
12139	" Labor & Material	"	" 22	256 91
12254	" " " "	"	July 12	139 17
12463	" Pro. Wages, June	"	" "	71 16
12464	" " " "	"	Aug. 6	211 06
12497	" Labor & Material	"	" "	206 71
12622	" " " "	"	" "	121 46
12640	" " " "	"	" "	9 91
12835	" " " July	"	" 23	2 69
13090	" " " "	"	" "	289 90
13072	" Pro. Wages,	"	" "	100 21
13076	" " " "	"	" "	26 62
13324	" " " Aug.	"	Sept. 14	24 39
13325	" " " "	"	" 13	96 22
13542	" Labor & Material	"	" 14	116 71
13725	" " " Sept.	"	Oct. 12	276 25
13816	" " " Aug.	"	" 19	266 66
13875	" Pro Wages, Sept.	"	" 20	21 67
13876	" " " "	"	" "	71 11

Amount forward,

5,008 21

6

A. O. 111.

St. Louis, Oct. 1st, 1884.

St. L. D. M. & Nor. R. R. Co. in Account with the

Bill No.

Wabash, St. Louis & Pacific Railway Co.

Audited Bills - Sundried - Continued.

Papers Sent.

Forward No. 1

5,008.23

13877	For Pro. paid Regan Bros. for Spools,	83	Oct. 23	26.80
14000	" " Wages	"	Nov. 16	81.99
14204	" " "	"	" "	73.18
14257	" Labor & Material	"	" 15	437.76
14384	" " "	"	" 20	155.92
14740	" " " Nov.	"	Dec. 14	141.79
14795	" " " "	"	" 20	123.27
14873	" Pro. Wages	"	" "	71.07
14874	" " " and water	"	" "	69.16
14944	" " Lem. H. J. Luennemann	84	July. 10	4.50
15254	" Labor & Material	"	" 19	129.98
15286	" " "	"	" "	334.31
15290	" Pro. Wages Dec.	"	" "	40.72
15300	" " "	"	" "	48.56
15511	" " " July.	84	Feby. 7	51.94
15512	" " Water "	"	" "	5.50
15513	" " Wages "	"	" "	54.13
15681	" Material & Labor "	"	" 20	116.68
15712	" " " "	"	" "	409.62
16008	" " " Feby.	"	Mar. 15	142.75
16115	" Pro Wages "	"	" 17	60.39
16116	" " " "	"	" "	63.05
16200	" Material & Labor "	"	" 19	160.77
16535	" Pro Wages Mar.	"	Apr. 16	69.80
16536	" " Water Feby.	"	" "	7.15
16538	" " Wages Mar.	"	" "	70.94
16850	" " Water "	"	May 6	2.71
16880	" Wages "	"	" "	68.86
16861	" " " "	"	" "	60.60
16957	" Material & Labor "	"	" 15	46.69
17060	" " " "	"	" 17	122.50
17286	" Repairs cars May	"	June 20	81.22
17446	" Pro Wages "	"	" 19	51.29
17447	" " " "	"	" "	52.83
17449	" " Water "	"	" "	4.35
17578	" Labor & Material "	"	July 10	102.24

8,544.37

St. Louis, October 1st. 1884.

St. L. D. M. & N. R. R. Co. in Account with the

Bill No.

Wabash, St. Louis & Pacific Railway Co.

Audited Bills - Overcharges		Papers Sent.		
E- 9536	For o/c	83	Sept. 21	.40
F-16109	" "	"	Dec. 4	11.91
16121	" "	"	" 31	.67
16648	" "	84	Jany. 30	6.15
				19.13

Wabash, St. Louis & Pacific Railway

Solon Humphreys and Thomas E. Tutt,
Receivers.

James F. How,

General Agent for the Receivers.

St. Louis, Mo., Nov. 20th, 1884.

James F. How

St. Louis, Mo.

Dear Sir:—

I am in receipt of yours of the 17th inst. I am willing to take Judge Blodgett's advice upon the question of making a transfer of the balance due me by the Wabash Company prior to the time the Receivers took charge. Therefore please have the transfer made and give me credit on the terminal property for the balance due me from the Wabash. Be kind enough to have this credit rated from the time the Receivers took charge, so that I will only have to pay interest on the difference between the total amount of my present interest and the total cost.

Are there any additional expenses to go into these terminals at Des Moines. I hope not. I think we should go to work now and get the Northwestern in on our terminals so as to reduce our expenses. I am going West in a short time and will see Mr. Hewitt if you think best.

When you have the accounts all settled up on your books please notify me here officially, so that I can make the proper entries on my Des Moines Northern Books.

I think it is best to base everything upon a rate of interest not to exceed 6 per cent per annum, because it might create trouble hereafter were we to put this at 7 per cent.

I am very much obliged to you for your attention to all these matters.

Very truly yours,

(Copy)

G. M. DODGE.

90 Wabash, St. Louis & Pacific Railway
 Solon Humphreys and Thomas E. Tutt,
 Receivers.

James F. How,
General Agent for the Receivers.

St. Louis, Mo., Nov. 17th, 1884.

Gen. G. M. Dodge
New York.

Dear Sir:

Your letter of 13th received. Since then I have received your telegram in reply to mine, agreeing to the settlement of the old account on the basis of the statement I sent you. In regard to your desire that we should charge you no more than six per. cent interest on the cost of terminal property in Des Moines, if you insist upon this charge I suppose we will have to agree to it, that being the legal interest charge in the State of Iowa. We are, however unable to borrow money at that rate and do not feel that the 7% charge is too high.

Concerning the settlement of the balance due you by the Wabash Co. prior to the appointment of the Receivers by giving you credit on our books for that amount of interest in the improvements on the terminal property in Des Moines standing in the name of James F. How, Trustee, I have had a talk with Col. Blodgett concerning the matter and he sees no legal objection to doing this, but the settlement of your balance in this manner, would have to be made at your risk, in case any question should arise in the future concerning it. With this understanding I see no objection to making this entry on our books.

Awaiting your reply, I remain,

Yours truly,

(Copy)

JAMES F. HOW,
Genl. Agt.

Sundries

To Railroads, Ind. & Sundries,

Genl. G. M. Dodge,

For readjustment of Construction accounts on
new basis—as per statements hereto attached.

Construction Account Des Moines North Western R. R.

For amount allowed to Genl. Dodge for con-
struction of Road Des Moines to Waukee at
average rate per mile, as obtained from cost of the
entire Narrow Gauge System, as built by him
Boone to Clive and Des Moines to Waukee=48.73

miles—cost as per Genl. Dodge's books= \$691,506.00

or average cost per mile = 14,190.56

Valuation of the Des Moines North Western
R. R. on that basis,

Des Moines to Clive = 2.69 miles = \$38,172.60

Clive to Waukee, 8.15 miles = 115,653.06 153 825 66

Less

Amount already allowed

per Journal voucher No. 199 1/2 = \$23,387.62

" " " " 199 1/2 = 43,657.47

" " " " 567 1,062.50 68 107 59 85 718 07

Rent of Property

For amount allowed to Genl. Dodge as

Interest on expenditures made by him

in Des Moines

See Journal vr. No. 245 = \$12,935.55

" " " " 245 = 23,425.84

at 7% per annum on 36,391.39

from June 1st, 1882 to May 28th, 1884 5,094.79

W. St. L. & P. Ry. proportion= 3/4

3 821 10

For reduction in our Interest charge

against him—He having decided to

retain interest in property in Des

Moines as expended by him, viz: 36,391.39

we have charged him on same—from

June 1st, 1882 to May 28th, 1884—7%

per annum = 5,094.79

Genl. Dodge's proportion= 1/4

1 273 70 5 094 80

Railroad Vouchers

St. Louis, Des Moines & Northern Ry.

For the following vouchers favor St. L. D. M. & N. Ry.

transferred to the credit of Genl. Dodge

See list attached..... 2 762 18

93 575 05

I certify that the above entry is correct and should be made on the books of This Company.

92 Wabash, St. Louis & Pacific Railway Company. 1884.
 JOURNAL ENTRY October
 TO

Rail Roads Ind & Sundries

Genl. G. M. Dodge

To Sundries

Construction Account Des Moines N. Western R. R.

For amount chargeable to Gen'l Dodge in read-
 justment of cost of Iron Rail furnished by the
 Wabash St. Louis and Pacific Ry. Co. Amount
 furnished as per new Basis

See statement attached hereto..... 114 619 42

Less

Amount already charged per

Journal voucher No. 199 1/2

\$7,587 .03

" " " 199 1/2

102,955 .95 110 542 .98 4 076 44

Audited Bills Sundries

St. Louis Des Moines & Northern Ry.

For the following bills against the St. L. D. M. Ry
 transferred to the debit of Gen'l Dodge

See list attached..... 8 544 37

Audited Bills Overcharges

St. Louis Des Moines & Northern Ry.

For the following bills against the St. L
 D. M. on Ry
 transferred to the debit of Gen'l Dodge

See list attached..... 10.13

Rail Roads Ind & Sundries

St. Louis Des Moines & Northern Ry.

For balance at debit of this account

transferred to debit of Gen'l Dodge..... 10 494 .29

23 134 23

I certify that the above entry is correct and should be made on the books of this Company.

93 Wabash, St. Louis & Pacific Ry. Company 1884
 JOURNAL ENTRY October
 TO

Railroads Ind. & Sundries

Genl. G. M. Dodge Real Estate A/C

To Rail Roads Ind. & Sundries

Genl. G. M. Dodge

For balance at credit of former account transferred to credit
of the latter account..... 12 965 55

Genl. Dodge's account will stand as follows:

Debit		
Balance - before making above entries.....	\$32300.01	
Debit entries above.....	23134.23	55 434 24
Credit		
Credit entries as above.....	\$12,965.55	
	93,575.05	106 540 60
Credit Balance.....		51 106 36

Railroads Ind. & Sundries

Genl. G. M. Dodge

To Gen. G. M. Dodge,

Ownership in Property in Des Moines.

For balance standing at credit Gen. Dodge's A/C now transferred to a General Ledger A/C. This balance is to stand and constitute Gen. Dodge's interest in the Des Moines property. On this amount he is to receive from the W. St. L. & P. Ry. 3/4 of 6% per annum commencing May 29th, 1884. He is to pay the W. St. L. & P. Ry. 1/4 of 6% per annum commencing May 29th, 1884, on the expenditures made by that Company as shown in the A/C Property in Des Moines Jas. F. How, Trustee viz. \$357,967.31 less Gen. Dodge's interest \$51,106.36 net \$306,860.95

I certify that the above entry is correct and should be made on the books of this Company.

Morris Trumbull,
Asst. Auditor.

94 Counsel for complainants while consenting to the use of copies instead of the originals and while waiving any objection to the identification of the books and papers, object to the introduction and use of any of the foregoing testimony as the accounts are matters appearing in the books, records or papers or accounts of the Wabash, St. Louis & Pacific Railway Co. as to dealings between that company and Gen. Dodge, or any of the other railroad companies, on the ground that the same cannot be binding upon these complainants; and do not show transactions with these complainants; and the complainants also object to all such evidence as being incompetent, irrelevant and immaterial.

Counsel for defendant states that he would like to have the record show that neither party objects to the use of copies in lieu of the originals.

Q. I call your attention to the paper marked Exhibit J. Tobin Deposition, 3-31-11, and ask you if you know in whose

handwriting this is, except the words, "Add rental paid to Wabash St. L. & P., see below", and the figures on the line opposite those words, the words, "Do $\frac{1}{4}$ of net cost of round house, see below," and the figures on the line in which those words appear and the words, "Add $\frac{1}{2}$ net cost of round house, see below," and the figures on the same line where these words appear the second time?

A. It is in the handwriting of a former clerk employed in this office by the name of F. H. Pund.

Q. And he was in the employ of the Wabash, St. Louis & Pacific Railway and afterwards of the Receivers?

A. Yes sir.

It is agreed that a copy of the exhibit just referred to by the witness, Exhibit J., may be substituted and returned by the Notary in lieu of the original.

The Exhibit referred to is in words and figures as follows, to-wit:

95 PROPERTY IN DES MOINES, IOWA.			
General G. M. Dodge, Ownership.....	51,106.36		
Interest on same at 6% per annum May 29th 1884 to May 1st, 1888.....	12,035.53	63,141.89	
Add rental paid to Wabash St. L&P. See below.....		7,887.72	
" $\frac{1}{4}$ of net cost of Round House, See below.....		3,058.40	
		74,088.01	
Wabash, St. Louis & Pacific Ry. Co.—Ownership.....	306,800.95		
Interest on same at 6% per annum May 29th, 1884 to May 1st, 1888.....	72,265.73		
	379,126.68		
Add			
Taxes paid by Receivers, W.St. L&P. Ry.....	4,755.04		
	383,881.72		
Deduct			
Rental collected from St. Louis, Des Moines & Northern R. R. Co. May 29th, 1884 to Nov. 1, 1887 41 3/31 months at \$191.93 per month.....	7,887.72	375,994.00	
Add $\frac{1}{2}$ of net cost of Roundhouse. See below.....		6,116.80	
		382,110.80	

COST OF NEW ROUND HOUSE, etc. AT DES MOINES, IA.

Total expenditures—Construction of Round-House—			
Tracks—Turntable, etc	17,733.60		
Less			
Insurance collected on old Round House	5,500.00	12,233.60	
Divided as follows:			
The Des Moines, & North Western Ry. Co. 1/4 =	3,058.40		
The St. Louis, Des Moines & Northern Ry. Co. 1/4 =	3,058.40		
The Purchasing Committee of the			
W. St. L. & P. Ry. 1/2 =	6,116.80	12,223.60	

375,994
12,233.60
7,887
395,114
63,141.89
\$458,256.49

Exhibit J. Tobin Dep.
3-31-11. A. E. M.

- 26 Counsel for complainants object to this exhibit on the same grounds as heretofore stated.

At this point a recess was taken until 2:30 P. M.

Counsel for complainants object to each and every part of the testimony as to the books, records and papers offered and introduced, because the same are the books and papers of the Wabash, St. Louis & Pacific Railway Company and mere hearsay as to each of the complainants and do not amount to an admission or record of the complainants or either of them, and show no transactions between the parties to this suit; and further because they are not the books, records or admissions of any parties through whom either of the complainants claim in this action; and because in a general way, such evidence is irrelevant, incompetent and immaterial and the complainants now move to strike out all of such evidence.

Counsel for complainants waive any further identification of the books as the books of account of the Wabash, St. Louis & Pacific Railway and consent to the use of copies of the journal vouchers instead of the original entries in the journals copied from said vouchers.

Cross-Examination

By Mr. Blodgett:

Q. Are the records and books from which you have been testifying the records and books of the Wabash, St. Louis & Pacific Railway Co.? A. Yes sir.

97 Q. They are not the books of the complainant, the Wabash, Railroad Co.? A. No sir.

By Mr. Cook:

Q. And they are not the books of the Chicago, Milwaukee & St. Paul Railway Co.? A. No sir.

By Mr. Blodgett:

Q. Are the exhibits that have been produced and attached to your testimony made from the books of the Wabash, St. Louis & Pacific Railway Co.? A. Yes sir.

Q. These books of the Wabash, St. Louis & Pacific Railway Co. only relate to transactions had before the Receivers were appointed of the property of that company, do they not?

A. That is true, yes sir.

Q. Down to what date do they show the transactions of the Wabash, St. Louis & Pacific Railway Company?

A. Down to the date the Receivers were appointed, May 28th, 1884, the Wabash, St. Louis & Pacific books contain transactions covering the latter date, but applying to business prior to May 28th, 1884.

Q. You carried out the transactions that took place down to that date that were not entered on the books of the company prior to the appointment of the Receivers?

A. Yes sir.

Q. Do these books show the accounts between the Wabash, St. Louis & Pacific Railway Company, and the Des Moines & St. Louis Railroad Company? A. Yes sir.

Q. Now, Mr. Guernsey in his examination referred to a number of items that appear in these books as charging; now, does that mean that those items were charged by the Wabash, St. Louis & Pacific Railway Co. against Des Moines & St. Louis Railway Co.? A. Yes sir.

Q. That is what that indicates? A. Yes sir.

Q. That indicates in other words that on those dates the Des Moines & St. Louis Railway became indebted to the Wabash Railroad Co. in the amount indicated in those items?

A. That is correct.

Q. Now, Mr. Guernsey asked you if later on those same items were not shown as credited, did he not?

A. Yes sir.

Q. And you answered, did you not, that they did?

A. Yes sir.

Q. Well, now, what would you understand from that entry of credits of that same amount at a later date in these books?

A. The expenditures were made by the Wabash, St. Louis & Pacific Railway and taken up in the construction records of the Des Moines & St. Louis Railroad; for example, some

of these expenditures covered property in Des Moines proper; a similar condition existed so far as the Des Moines & Northwestern, expenditures were made and taken up on the Des Moines Northwestern construction records. These transfers were made later on so as to transfer the joint property of the Des Moines & St. Louis and the Des Moines Northwestern in a separate account called, "Property in Des Moines"; it was the joint property of the Des Moines & St. Louis and Des Moines Northwestern; it was taken out of those two accounts and transferred to a separate account so as to show what it was.

Q. That would not indicate then, as I understand you, that the Wabash, St. Louis & Pacific Railway Co. had been
99 reimbursed the amount?

A. No, they were not, it was merely a transfer in order to get all the property in Des Moines together in a separate account.

Redirect Examination

By Mr. Guernsey:

Q. In the first place you said that the items referred to by me as charges were charged by the Wabash to the Des Moines & St. Louis? A. Yes sir.

Q. I referred to other charges so that statement is not wholly accurate; for instance I referred to charges made to real estate in Des Moines and I referred to charges made against Gen. Dodge in the Dodge account; that statement put generally in that way, in referring to all the items that I referred to as charges, would not be correct, would it?

A. As I understand the question asked me was whether these charges to the Des Moines & St. Louis were charges made by the Wabash, St. Louis & Pacific and I answered yes.

Q. Then you limit that to the charges made to the Des Moines & St. Louis?

A. I think the question read that way and I so answered.

Q. Of course the record will show how it read?

By Mr. Cook:

Q. How about the Des Moines North-western?

A. Similar.

By Mr. Guernsey:

Q. This is the situation then, whenever the Wabash, St. Louis & Pacific advanced any money for the construction of the Des Moines & St. Louis that was charged against that company? A. Yes sir.

Q. And appears in this account identified as Exhibit A to this deposition? A. Yes sir.

100 Q. And whenever it advanced any money for the construction of the Des Moines Northwestern that money was charged to that company and appears in the account that has been identified as Exhibit B. to this deposition?

A. Yes sir.

Q. Now, then, later they took out of those accounts everything that had been expended in the City of Des Moines and charged it to this other account, representing the investments in the City of Des Moines?

A. All property in Des Moines, two accounts, real estate in Des Moines and property in Des Moines.

Q. And those credits to which I called your attention on the account of the Des Moines & St. Louis and Des Moines Northwestern were credits made to offset the charge to this other account which is represented by the papers that are Exhibits A, B, C, C-2, C-3 and C-4 to your former deposition that was referred to?

A. Yes sir, real estate in Des Moines and property in Des Moines.

Q. There was no money paid over at that time but these amounts that had been advanced and had been expended within the City limits were transferred to this account which we call property in Des Moines here in this exhibits of yours?

A. That is so far as these transfers were concerned?

Q. Yes. A. Yes sir.

Q. Now, you state it was the joint property of the Des Moines & St. Louis and Des Moines Northwestern; do the books show that? A. Yes sir.

Q. Where?

A. The first entry that was made was made on April 8th, 1881, charging real estate of Des Moines—

Q. Just read the entry please?

A. (Reading), "Real estate, Des Moines, Iowa, joint account D. & St. L. and D. & N. W. to Des Moines & St. Louis Railroad for the following payments for account of real estate in the City of Des Moines, Iowa, charged to 101 latter account in the months of February, March and April, 1881, now transferred to former account, the property being held for joint account of the Des Moines & St. Louis and Des Moines & Northwestern Railways as per letter of James S. Clarkson, president, filed herewith."

Q. Now that is what the book shows?

A. Yes sir.

Q. That shows that the Wabash, St. Louis & Pacific had expended some money to acquire this property, does it not?

A. Yes sir.

Q. And it does not show that it had ever been reimbursed, does it? A. No sir.

Q. Now, would you say that it showed that that property, which was purchased with this money belonged to those other people at that time?

Counsel for complainants objects to the question as calling for the conclusion and opinion of the witness.

A. That is all I could say (pointing to the entry).

Q. All that you know about it is what appears in this entry, isn't it? A. Yes sir.

Q. You didn't intend on your cross-examination to create the impression that you had any personal knowledge with reference to the matter or that you had any knowledge in reference to it aside from what the books show?

A. No sir.

Q. Now, you said these books were the books of the Wabash, St. Louis & Pacific Railway Co. in whose custody are they now?

A. In the custody of the auditor of the Wabash Railroad.

Q. How long has he had them? A. All the time.

Q. Ever since it was a railroad hasn't he?

A. Yes sir.

Q. The present company when it was organized and took over the property, took these books with it?

A. Yes sir.

Q. And they have been in its possession ever since?

A. Yes sir.

Q. Now prior to that time they were in the possession of the Wabash Western Railway Co.—or Railroad Company, which was it? A. The Wabash Railway Co.

Q. Were they not? A. Yes sir.

Q. That company had this property west of the river now operated by the Wabash Railroad Co. prior to its acquisition by the Wabash Railroad Co., did it not? A. Yes sir.

Q. Now, then, prior to the time that the Wabash Western Railway Co. had these books who had them?

A. They were in the possession of the Receivers of the Wabash St. Louis & Pacific Railway Co.

Q. And did the Purchasing Committee have them at any time? A. No sir.

Q. And prior to the Receivers they were in the possession of the Wabash, St. Louis & Pacific Railway Co.?

A. Yes sir.

Q. So that these books have been in the auditing department and with the books of account of whoever has had possession of and been operating the railroad now owned by the

Wabash Railroad Co. ever since these entries were made, have they not? A. Yes sir.

Q. Now, you state the books there related to transactions down to the date of the appointment of the Receivers; referring to this journal voucher No. 1750 relating to entries made in October, 1884, and especially to the letters which accompany that journal voucher would you say that the agreement for the making of that entry had been made prior to the appointment of the Receivers?

A. That I do not know; I do know this, that this covered transactions that occurred prior to the appointment of the Receivers and therefore were taken up on the Wabash, St. Louis & Pacific Railway Company's books.

Q. Well, have you examined these letters?

A. I don't understand that the letters would cut any figure at all.

Q. I didn't ask you that, I asked you whether you had examined them? A. No sir.

Q. Will you please do so?

A. I quote from Gen. Dodge's letter as follows—

Q. I didn't ask you that, I just asked you to examine the letters; have you examined both of them? A. Yes sir.

Q. Those letters were filed with the journal voucher as explanatory of the transaction? A. Yes sir.

Q. Now, in view of those letters what do you say as to whether the basis for the making of these entries shown by the journal voucher that I have just been referring to was established prior to the appointment of the Receivers?

A. That I do not know, it may have been the subject of previous correspondence and carried on for a year.

Q. Is there anything in the letters to create that impression, if so, please call it to our attention?

A. Neither pro nor con.

Q. Now, I wish you would state one more thing, Mr. Tobin, which is not redirect examination, but I omitted it; the old books of the Wabash, St. Louis & Pacific Railway Co. showed charges here to this account of real estate in Des Moines, aggregating \$357,967.31, now you may state whether you are familiar with the books of the Wabash Western Railway Co. and with the books of the Wabash Railroad Co.?

A. Yes sir.

Q. Do the books of either of those companies contain any account showing this real estate in Des Moines as an asset of the company?

A. That I am not prepared to say without making an examination.

Q. Well, will you make an examination and let us know and you can tell by looking at your balance sheets, can't you, whether this real estate is listed as an asset?

A. I can determine it from an examination.

Q. And will you also tell us whether the stock in the Des Moines Union Railway Co. which stands in the name of the New York Trust Co. is listed in the balance sheets as an asset? A. Yes sir.

Q. Do you remember whether it is or is not?

A. No sir, I do not.

Q. If you find any account in the books of either the Wabash Western Railway Co. or the Wabash Railroad Co. carrying this real estate inside of the city limits of Des Moines as an asset, will you have copies of such account or accounts attached to your deposition? A. Yes sir.

Counsel for the Chicago, Milwaukee & St. Paul Railway Co. renews his former objection to the testimony on redirect examination in regard to books and papers of the Wabash, St. Louis & Pacific Railway Co., and renews his motion to strike out on the same ground as heretofore made, and each of the complainants separately makes the same objection and the same motion on the same ground.

At a subsequent date to the above examination witness conveyed to the Notary the information that the real estate referred to in the first question on this page was not listed as an asset, and, in answer to the second question, 105 that the stock of the Des Moines Union Railway Co. standing in the name of the New York Trust Co. is listed in the balance sheet as an asset of the Wabash Railroad Co.; that it was carried into the accounts by a journal voucher, a copy of which is marked Exhibit K. Tobin Deposition, 3-31-11, and is in words and figures as follows:

THE WABASH RAILROAD COMPANY.

ACCOUNTING DEPARTMENT.

Journal entry October 1904.

Capital Stock Des Moines Union Ry. Co.

To Profit & Loss

For Capital Stock of the Des Moines Union Ry. Co. owned by the Wabash R. R. Co. now taken up on the books of the Wabash R. R.

Certificate No.	37	1 share	H. L. Magee,
"	28	1 "	Jos. Ramsey, Jr.
"	35	498 shares	Continental Trust
			Co. of New York, Trustee

500 shares

Taken into account at a nominal amount

1.00

I certify that this is an exact copy of Journal voucher No. 11,665, original on file in Auditors Office.

T. J. Tobin
3/31/11 Auditor.

I certify that the above entry is correct and should be made on the books of this company.

Exhibit K. Tobin Dep.

3-31-11 A. E. M.

106 EXHIBITS A, B, C, C2, C3 AND C4 TO THE DEPOSITION OF T. J. TOBIN IN CHICAGO MILWAUKEE & ST. PAUL RAILWAY CO. VS. DES MOINES UNION RAILWAY COMPANY IN DISTRICT COURT POLK COUNTY IOWA.

REAL ESTATE — DES MOINES

Joint a/c D & St L & D & N W.

DEBITS:

April, 1881,

For the following payments for a/c of real estate in the City of Des Moines, Iowa, charged to Des Moines & St. Louis R. R. in the months of Feb'y, March and April, 1881, now transferred to real estate Des Moines, the property being held for joint account of the Des Moines & St. Louis and Des Moines & North Western Rys., as per letter of James S. Clarkson, Pt. filed herewith:

Vr.	5746	favor J. S. Clarkson.....	\$3436.88	
"	5762	" " ".....	3523.75	
"	5807	" " ".....	4238.50	
"	5838	" " ".....	9750.00	
"	5848	" Polk & Hubbell.....	840.00	
"	7125	" " ".....	870.00	
"	7197	" " ".....	8005.50	
"	7468	" J. M. Coggeshall.....	700.00	
"	7469	" Chas. M. Hutsonpiller.....	1020.00	
"	7470	" John R. Rollins.....	4080.00	
"	8173	" J. S. Clarkson.....	8100.00	
"	8174	" Polk & Hubbell.....	3307.50	
"	8208	" Melissa C. Harney.....	2500.00	
"	8520	" J. S. Clarkson.....	6500.00	
"	8750	" Louis Hyland.....	3783.33	
"	8790	" Polk & Hubbell.....	102.00	
"	8922	" Mary C. Maginnis.....	5100.00	
"	8924	" Polk & Hubbell.....	150.50	
"	8925	" Polk & Hubbell.....	1155.90	\$67163.86
May,	1881	Vouchers recorded in May, 1881		
No.	10093	J. S. Clarkson, Prest.,		
		real estate, May 31, '81.....	700.00	
"	10599	J. S. Clarkson, real estate		
		June 17, '81.....	35700.00	36400.00
Voucher No.	9718	F. A. Blasher, real estate		
		May 21, '81.....	875.00	
June,	1881,	Voucher 12355 J. S. Clarkson,		
		real estate, July 15, '81.....		618.75
		Forward.....		105057.61

PAGE CUT OFF

107		Forward.....		\$105057.61
June, 1881		Construction Vouchers.....		7475.00
July, 1881		Vouchers recorded in July, 1881,		
No. 13660		J. S. Clarkson, Bal. of cash due, June 17, 1881.....	\$ 400.00	
"	13720	Polk & Hubbell, R. E. bought, July 31, '81.....	8950.00	9350.00
Aug., 1881,		Amount paid for real estate in the City of Des Moines, and included in voucher favor J. S. Clarkson, No. S-73, and charged to D. M. & St. L. R. R. in error, now transferred.....		14000.00
Sept., 1881,		Vouchers recorded, Sept. 1881, No. 17090, J. S. Clarkson, purchase of real estate, Oct. 5, '81.....	\$2000.00	
		No. 17189, J. S. Clarkson, purchase of real estate, Oct. 8, '81.....	5259.20	
		No. 17439, St. L. D. M. & N. W., purchase of R. E., Oct. 12, '81.....	1750.00	
		No. 17663, Felix G. Clarke, purchase of R. E., Oct. 15, '81.....	3000.00	12009.20
Oct. 1881,		Voucher recorded Oct., 1881 No. 404, J. S. Clarkson, purch. of real estate Nov. 7, '81.....		5220.00
Nov. 1881,		Voucher recorded Nov. 1881, No. 2883, A. D. Littleton, damages to leasehold, Dec. '81.....		240.00
Dec. 1881,		Vouchers recorded, Dec. 1881, No. 4288, Sam'l. Merrill, purch. of lot, Dec. '81.....	1375.00	
		No. 4955, J. S. Clarkson, real estate, Jan. 7, '81.....	550.00	1925.00
		Year ending Dec. 31, 1881.....		\$155276.81

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PROPERTY DES MOINES.

James F. How, Trustee.

DEBITS:

Feb. 1882,		Vr. #8739, Galusha Parsons, legal services, Jan. to Dec., 1881.....		\$4177.70
		For amount expended in City of Des Moines charged to Construction a/c Des Moines North Western Ry., now transferred.		
		Statement in detail filed with J. V. 77....	\$18711.07	
		For amount of balance of a/c (real estate Des Moines) transferred. Note \$155,276.81 charged real estate Des Moines in year 1881, and transferred to account expenditures for construction & equipment (J. V. 77).....	3956.01	22667.08
March, 1882		Vr. #10056, Iowa Loan & Trust Co. principal and interest on lot, March, '82.	401.30	
		Vr. #10057, Iowa Loan & Trust Co., principal and interest on lot, March, '82.	1093.80	1495.10

April, 1882	Proportion of the following vouchers for account of Des Moines real estate and charged to construction of Des Moines North Western in March, 1882 record.		
	Vr. No. R298 F. M. Hubbell, expenditures, Mar. 1882.....	304.63	
	Vr. 299, Aulman & Turner, water connections, Feb. 1882.....	29.20	
	Vr. 300, H. L. Chaffee, stoves and fixtures, Sept. 1881.....	86.80	
	Vr. 303, Charges R. I. & Pac. ft. charges on pipe, &c., Jan. 1882.....	19.70	
	Vr. 308, C. R. Merrill, new shoes for mules, Feb. 1882.....	4.00	
	Vr. 309, W. B. Mitchell & Co., oil, harness, &c. Jan., 1882.....	2.25	
	Vr. 310, N. S. McDonald & Co. iron, Feb. 1882.....	.90	
	Vr. 312, J. D. Seeberger, hardware, Jan. & Feb., 1882.....	21.87	
	Vr. 313, Geo. S. Sneer, oil cans, &c, Jan., 1882.....	4.75	
	Vr. 315, Western Telephone Co., rental of instrument, Feb., 1882.....	3.25	
	Vr. 316, L. P. Wilcox, oats, Feb. '82..	3.50	
	Vr. 322, Chgs. R. I. & P., frt charges on tanks, Sept., 1881.....	17.09	
	Vr. 333, Wm. Langton, building round-house & shops, Mar. 1882.....	2430.00	
	Vr. 334, F. M. Hubbell, expenditures Mar., 1882.....	323.30	
	Vr. 335, F. M. Hubbell, expenditures, March, 1882.....	6.00	3257.24
May, 1882,	Amount charged to Des Moines North-western R. R. in Dec., 1881, (JV. R 15 for turntable shipped to Des Moines in cars 2404 K. C. & N. and 304 I. P. C. now transferred.....		\$ 425.00
100	For the following vouchers charged to construction Des Moines Northwestern R. R. now transferred Vr. No. R 90 H. & H. Elliott, R. R. crossings, Sept., 1881..	\$1000.00	
	No. 116, H. & H. Elliott, frogs, sw. stands &c. Nov., '81.....	1311.00	
	No. 157, Fairbanks & Co., scales Dec. '81.....	105.00	
	No. 158, L. M. Rumsey Mfg. Co., supplies, Dec., '81.....	570.73	
	No. 233, H. & H. Elliott, frogs & sw. stands, Jan. '82.....	1485.00	
	No. 237, Shickle H. & Howard Iron Co., cast pipes, Dec. '81.....	424.54	
	No. 294, L. M. Rumsey Mfg. Co., pipe ells and nozzles, Feb. '82.....	69.64	4965.91

Amount charged to construction Des Moines & St. Louis R. R. Co. a/c Dec. 1881, in J. V. S. 42, for 1/2 of 1/34 ft turntable shipped to Des Moines, Ia. in cars 2404 K. C. & N. and 304 I. P. C. now transferred.....

425.00

Amount expended by Gen'l. Dodge in city limits of Des Moines as per statement filed with J. V. No. 190 1/2, Marked A.....

36391.30

For amount of iron rails, laid in City of Des Moines, furnished by W. St. L. & P. Ry. Co. charged on W. St. L. & P's. Co's. books to construction a/c Des Moines No. W. Ry. now transferred—distance 5.15 miles, 55 tons, per mile at 49.80 per ton (cost in St. Louis, Gen'l. Dodge having paid freight North of St. Louis).....

14105.85

110

Forward.....

\$ 87910.27

June, 1882,

For amounts charged in construction records now transferred Des Moines & St. Louis R. R.

JDP

401

8145 25

Vr. No.

Des Moines Northwestern R. R.

Vr. No. R-342 J. H. Cockersham, load of

hay, May, 82..... 7.00

No. 344, Wm. Langton, labor and mat'l., April 82..... 528.75

No. 350, M. C. Thomas, cost of suit, May, 82..... 4.40

No. 361, C. R. I. & P. Ry., freight on mat'l., Feb. 82..... 14.00

No. 362, E. F. Chile, moving house, April, 82..... 65.00

No. 363, H. F. Getchell & Sons, lumber, Apr., 82..... 20.64

No. 364, Polk & Hubbell, am't. advanced for hay, Apr., 82..... 6.75

No. 380, C. J. Goode, right of way June, 82..... 750.00

No. 388, N. E. Walsh, gas fitting, Nov. 1882..... .85

No. 389, Pay rolls, engineers, etc., May, 82..... 107.91

No. 397, Frank A. Spooner, driving train, June, 82..... 41.35 \$ 9601.90

July, 1882,	Vr. 17313 Charges Burl. & Qey. Exp. at Des Moines, June, 82		1000.00
Aug., 1882,	For vouchers for Des Moines real estate charged to construction Des Moines Northwestern a/c in July and August, now transferred.		
	Vr. No. r-399, Wm. Langston, interest, July, 1882	\$ 58.76	
	No. 402, pay rolls, laborers, June, 1882 ..	261.55	
	No. 403, Gus Smith, oats, Feby. to May, 1882	35.70	
	No. 409, J. J. Payne, recording fees, August, 188275	
	No. 420, Pay rolls, laborers, July, 1882 ..	111.35	
	No. 436, S. A. Robertson, lime and cement, Dec. 81, to Mar. 82	123.80	591.91
Sept. 1882,	For amount charged to construction Des Moines Northwestern R. R. in bill of Chief Engineer for Sept. 1882, for Frogs, etc. in City of Des Moines now transferred		330.00
Oct. 1882	Pay rolls audited for month of October, 1882		3610.31
	For amount charged on construction records now transferred, Des Moines North-western		
	Vr. No. 406, H. P. Skeele, expense paying rolls, Oct. 82	260.87	
111	Forward		13812.73
			116947.12
Oct. 1882,	Labor and mat'l. furnished by Chief Engineer's Dept.		1861.00
Nov. 1882,	Pay rolls audited for month November, 1882		2908.58
	Labor and Mat'l. furnished by Chief Engineer's De't.		6843.78
	For amounts charged on construction records now transferred, Des Moines Northwestern		
	Vr. No. 513, Des Moines Nat'l. Bank, assessment & interest, Dec., 82	849.25	
	No. 514, Iowa Nat'l. Bank Sewer, assessment & Interest to Jan. 1, 83	751.80	
	No. 515, Valley Bank, assessment and interest, to Dec. 27, 82	87.29	7247.18
Dec. 1882,	For amount charged to construction Des Moines & St. Louis R. R. for a/c real estate City of Des Moines in December, 1882, now transferred		1246.39
	Vr. No.		
	For paymaster's check issued on a/c Dec. 1882, pay rolls	3176.23	

		For labor & Mat'l. furnished by Chief Engineer Dep't.....	558 30	
		Voucher 7408, R. E. Durkee, purchase price of lot, Jan., 1883.....	976 80	
Jan.,	1883,	For mortgage assumed on lot 7, block 15, original town of Ft. Des Moines for 4000.00 being coupon bond dated Feb. 1, 1881, in favor of M. L. P. Hill with interest at 7% payable annually. Principal due Feb. 1, 1886, copy of deed of trust herewith (J V. 514).....	4000 00	
		Vr. 9365, M. L. Hill, interest on mortgage assumed Feb. 1883.....	280 00	
		Labor & Mat'l. furnished by Chief Engineer. Dept.....	5216 48	
Feb.	1883,	For value of bridge over the Des Moines River in Des Moines and charged to construction Des Moines & St. Louis R. R. now transferred (J. V. 528).....	37000 00	
		Error in charging Des Moines yards to roadway and structure a/c in Chief Engineer's Dep't. V. D. folio 25.....	2107 34	
		Vr. 10800, Des Moines Building Loan Assn. Right of way, Feb. '83.....	\$600 00	
		Vr. 10802, Hannah Costello, Right of way, Feb. '83.....	300 00	
		Vr. 10919, Parsons & Runnells, legal services exp. July to Dec. '82.....	327 50	1227 50
Mar.	1883,	Correction of distribution on voucher 10919, S. 5, favor Parsons & Runnell's as per letter attached, (J.V.547) when the voucher was recorded it did not give location of services rendered and the distribution was not correct-now corrected.	517 00	
		Forward.....	192203 70	
112		Forward.....	\$192203 70	
Mar.	1883,	Labor & Material furnished by Chief Engineering Dep't.....	225 81	
		Vr. No. 13548, J. J. Paynes, recording deeds Aug. to Dec. 82, Jan. 83.....	\$ 5 50	
		No. 13686, J. Donovan, right of way.....	410 30	415 80

THE DES MOINES UNION RY. CO., ET AL.

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Apr.	1883,	Labor & Material furnished by Chief Engineer's Dep't.....	715.45	
May,	1883,	Labor & material furnished by Chief Engineer's Dep't.....	2140.63	
July,	1883	Vr. No. 2129, H. F. Getchell & Son, damages on lots, 1883.....	\$1000.00	
		Vr. No. 2193, Parson & Runnells services as attorneys, Jan. to June, 83.....	40.50	1040.50
Sep.	1883	Labor & material furnished by Chief Engineer's Dep't.....	2090.54	
		Vr. No. 5037, Frederick Dennis, purchase of lot, Sept., 1883.....	1200.00	
Oct.	1883,	Vr. No. 7172 Parsons & Runnell's, services and expenses, July to Sept. 83.....	40.00	
		Vr. No. 7217, Annie M. Long, land June, 82.	1000.40	
		Vr. 7218, Hay & Sherman, Assignee, Right of way, July, 82.....	2166.70	
		Vr. No. 8153, Julia Maher, purchase of lot, Nov. 83.....	925.00	
		Vr. No. 8935, Ewing Jewett & Chandler, land, Nov. 83.....	2300.00	6722.10
Nov.	1883,	Vr. No. 9303, Hon. J. S. Runnell's, recording fees, Nov. 1883.....	3.75	
Dec.	1883,	Vr. No. 11039, Hay & Sherman, right of way, Nov., 1883.....	213.33	
				<u>200071.61</u>

CREDITS:

Nov.	1882.	To correct error in October pay rolls caused by addition of two rolls being carried forward and the amount included through error in recapitulation of total of rolls.....	\$1113.80	
Oct.	1883,	Deposited by James F. How, collected from Coggeshall & Hunt, a/c collections made by them (J.V. 879).....	\$688.23	
		Amounts received from Adams & Hastie, proceeds of rents collected after deducting sundry expenditures on commission on same.....	2299.73	
		Deposited by Jas. F. How, collected from T. E. Rudd, for ground rent from Oct. 1, 83 to Jan. 1, 84, South 20 ft. lot 9 block 20 of the City of Des Moines 50.00	3037.96	
Dec.	1883,	Received from Jas. F. How, Secty. a/c rents collected in D. Moines JV.....	129.26	4281.11
				<u>202000.50</u>

993 1/2

SUMMARY: Year ending Dec. 31, 1881, \$155,276.81
 " " " " 1882, 140,741.49
 " " " " 1883, 61,949.01 : \$302,000.50

\$357,967.31

113 State of Iowa,
Polk County—ss.

I, J. P. Maher, Clerk of the District Court of the State of Iowa, in and for Polk County, do hereby certify the foregoing to be a full, true, correct and complete copy of Exhibits "A" "B" "C" "C2" "C3" and "C4" attached to the deposition of T. J. Tobin, said deposition of said Tobin being taken before Arthur E. Mooney, a Notary Public in and for the City of St. Louis, and State of Missouri; in the case of Chicago, Milwaukee & St. Paul Railway Company, vs. Des Moines Union Railway Company, and file in said cause in my office on the 17th. day of January, 1910, as full, true, correct and complete as the same remains on file in my office.

Seal
District Court
Polk County,
Iowa.

In Witness Whereof I have hereunto set
my hand and affixed the seal of
said court at Des Moines, this
12th. day of June, A. D. 1911.

J. P. MAHER,
Clerk of said District Court.
By A. E. Mahan, Deputy.

114 State of Missouri,
City of St. Louis—ss.

I, Arthur E. Mooney, a Notary Public, within and for the City of St. Louis, State of Missouri, do hereby certify that, by consent of counsel for complainants and defendants, T. J. Tobin came before me on the 31st day of March, 1911, at the Auditor's office of the Wabash Railway Company, southwest corner of 7th and Chestnut Streets in the City and State aforesaid, that he was by me sworn to testify the whole truth of his knowledge concerning the matter in controversy; that he was examined and his examination reduced to writing in shorthand by me, by consent of counsel for the respective parties, at the time and place aforesaid.

I further certify that counsel agreed in my presence that they would waive the signature of the witness to the deposition and that it might be read in evidence with the same force and effect as if it had been signed.

I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

I further certify that the fee for taking said deposition is \$..... and that the same is just and reasonable.

In testimony whereof, I have hereunto set my hand and official seal at the city of St. Louis and State of Missouri this 19th day of June, 1911.

(Seal)

ARTHUR E. MOONEY,
Notary Public.

116

Deposition of Frederick M. Hubbell, Filed Nov. 2, 1912.

118 In the Circuit Court of the United States in and for the Southern District of Iowa, Central Division.

Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company, Complainants. No. 4429. Equity.

vs.

Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, Respondents.

Depositions of Frederick M. Hubbell, C. Huttenlocher and F. C. Hubbell taken by agreement of parties before James F. Allen as examiner at the office of Guernsey, Parker & Miller, Des Moines, Iowa, commencing at 10 o'clock A. M. May 31st, 1911.

Present: Wells H. Blodgett, Esq., J. L. Minnis, Esq., J. C. Cook, Esq., and Robert Ryan, Esq., solicitors for complainants, and N. T. Guernsey, Esq., solicitor for defendants.

It is stipulated that said depositions shall be taken in shorthand by said examiner and that a transcript thereof certified by him to be full, true, accurate and correct shall be
119 filed and returned by him as the depositions of said witnesses.

FREDERICK M. HUBBELL, being duly sworn as a witness on behalf of defendants, testifies as follows:

Direct Examination

By Mr. Guernsey:

1. Q. Your name is Frederick M. Hubbell? A. Yes.
2. Q. Where do you reside? A. In Des Moines.
3. Q. You are one of the defendants in this suit?
A. Yes.
4. Q. How long have you resided in Des Moines?
A. Fifty years.
5. Q. What is your age? A. Seventy-two.
6. Q. And what is your business? A. Mostly real estate.
7. Q. We have here a stipulation, which we propose to use, containing a list of the offices held by you commencing

with the Des Moines Western and referring to most, if not all, of the corporations you were connected with in connection with this matter and I will ask you if defendants Exhibit 108 is substantially a correct list of the offices you have held in the various corporations? A. It is.

8. Q. You are secretary of the defendant, the Des Moines Union Railway Co.? A. I am.

9. Q. And you were named as its secretary in the original articles and have been secretary ever since?

A. I was named secretary in its original articles and have been elected ever since annually, except when the annual meeting was postponed.

10. Q. And you are also a director in the Des Moines Union Railway Company, I believe? A. Yes, sir.

11. Q. And were named as director in the original articles and have been elected to that office ever since in that company?

A. Yes.

12. Q. Have you in each instance when you have been re-elected either as secretary or director of the Des Moines Union Railway Co., been so elected by the unanimous vote of all persons voting at that meeting? A. I have.

13. Q. The record that I have just referred to shows that you were an officer of the Narrow Gauge Railway Construction Co. and also an officer in the road known as the Des Moines, Adel & Western; I wish you would state in a general way how, if at all, your connection with those corporations led to your becoming interested in the development of the Terminal Road in Des Moines?

A. My partner's name was Jefferson S. Polk, our firm name was Polk & Hubbell, we became interested in the Des Moines, Adel Western Road, a narrow gauge, extending from Waukee to Adel, and we assisted in extending this line from Adel to Panora. The contract for the extension was with the Narrow Gauge Railway Construction Co.

14. Q. Now, how long was this road extending from Waukee to Adel? A. Seven miles.

15. Q. And Panora was some distance west or northwest of that?

A. The distance from Waukee to Panora was about 30 miles.

16. Q. While you were interested in this line extending from Waukee to Panora did you have any negotiations with the then Wabash Company looking to an extension of that line both northwest and also east to Des Moines? A. Yes.

17. Q. And was it in this connection that the contract of December 8th, 1880, between the Wabash, St. Louis & Pacific Railway Co., the Des Moines & Northwestern Railway Co. and the Narrow Gauge Railway Construction Co. marked Com-

plainant's Exhibit 2 to the stipulation between the parties filed in this case March 23rd, 1911, was made? A. It was.

121 18. Q. And in that same connection was there a supplemental contract made between the Wabash, St. Louis & Pacific Railway Co. and the Narrow Gauge Railway Construction Co. on December 8, 1880, commencing with the recitation "that the Narrow Gauge Railway Construction Co. did heretofore, to-wit: on the 8th day of December, 1880, enter into a contract with the Des Moines Northwestern Railway Co., etc.," a copy of which supplemental contract is defendants Exhibit 220 in the stipulation of the parties as to certain records which the defendants propose to use?

A. There was.

19. Q. At the time this contract was made how far towards Des Moines was the then Wabash Company running its trains from St. Louis? A. Sixty-seven miles, to Albia.

20. Q. Sixty-seven miles from St. Louis or Des Moines?

A. Des Moines.

21. Q. And what, if any, extension of the Wabash lines was contemplated?

A. It was contemplated that the Wabash would extend its road from Albia to Des Moines.

22. Q. The complainants have introduced Plaintiffs' Exhibit No. 1, which is a contract dated December 8th, 1880, between J. S. Polk, J. S. Clarkson, F. M. Hubbell and J. S. Runnells and the Wabash, St. Louis & Pacific Railway Co. for organizing the Des Moines & St. Louis Railroad Co.; did these contracts also grow out of the same negotiations?

A. They did.

23. Q. What was the name of the company, which owned the line between Waukeo and Panora, to which you have referred?

A. It was called the Des Moines Northwestern Railway Co.

24. Q. Now, referring again to the contract for the organization of the Des Moines & St. Louis Railroad Company, [Plaintiffs'] Exhibit No. 1, that company was in fact organized and the road built? A. Yes.

122 25. Q. It is said in the bill that you and your said associates, who were parties to this contract, were the executive officers, directors and managers of this railroad; as a matter of fact who built the Des Moines & St. Louis Railroad?

A. James F. How as agent for the Wabash, St. Louis & Pacific Railway Co.

26. Q. What control did you exercise over the Des Moines & St. Louis Railroad? A. None whatever.

27. Q. What did you personally have to do with the building of the Des Moines & St. Louis Railroad?

A. I had nothing to do with the building of it.

28. Q. I call your attention to a record of a meeting of the directors of the Des Moines & St. Louis Railroad Co. shown as defendants Exhibit 174 in the stipulation of the parties made this day, the meeting referred to being a directors' meeting held May 10, 1881, and will ask you whether the agreement, which is set out in that record, between James F. How, agent, and the Des Moines & St. Louis Railroad Co. is the agreement under which that road was built? A. It is.

29. Q. Do you know whether James F. How, agent, at that time sustained any official relation to the Wabash, St. Louis & Pacific Railway Co.?

A. He was one of the officers of the Wabash.

30. Q. From the time that this contract that has been referred to was made who controlled the Des Moines & St. Louis Railroad? A. The Wabash, St. Louis & Pacific.

31. Q. And what, if any, control did you exercise over the company, or the construction of its railroad, or its operation?

A. None, except to do as the Wabash wanted me to.

32. Q. This contract provides for the assistance of yourself and your associates in procuring aid, right-of-way and things of that kind; do you know whether any aid was voted to the Des Moines & St. Louis Railroad Company?

123 A. I do not.

33. Q. So far as any attention was given to those matters what did you personally have to do with them?

A. I did not have anything personally to do with them.

34. Q. There are some allegations in the bill about domination and control of the road by yourself, what is the largest amount of stock that you ever owned in it?

A. One share of \$100.

35. Q. The record shows that at various times you were a director, treasurer, secretary, vice-president, and assistant secretary of the Des Moines & St. Louis Railroad Co.; now, in the first place I would like to ask you how the road was operated and whether the Des Moines & St. Louis Railroad Co. ever operated it?

A. The Des Moines & St. Louis Railroad Co. never operated the road, it was leased to the Wabash, St. Louis & Pacific and operated by the last named company.

36. Q. And afterwards by the Receivers?

A. Afterwards by the Receivers and successor companies to the Receivers.

37. Q. So far as you know did it ever have any books of account or general books aside from its records as a corporation showing the meetings of its stockholders and directors?

A. Not that I know of.

38. Q. Now, after this railroad was completed was there any time when the majority of its directors were not officers or employees of the then Wabash Company? A. No.

39. Q. Now, as an officer and director, what did you do?

A. I did whatever the Wabash wanted me to do.

40. Q. Do you still own the share of stock?

A. I do not.

41. Q. What became of it?

A. I gave it to the Wabash.

124 42. Q. To what extent, if at all, did you influence or control the policy or actions of this company, or make suggestions in regard to its policy or actions?

A. I had no control and made no suggestions.

43. Q. Now, referring to the contract between the Wabash, St. Louis & Pacific Railway Co. and the Des Moines Northwestern, which is Plaintiff's Exhibit No. 2, this contract provides that the Construction Company is to build the road, to receive the stocks, and bonds and subsidies, the bonds being Wabash general mortgage bonds, at the rate of \$7000. per mile, and then provides that the Wabash shall furnish the bonds to the Des Moines Northwestern and shall repurchase them for the Construction Company at 95 cents of their par value; were these forms gone through with or not?

A. Those forms were not gone through with; the Wabash furnished the money to build the Des Moines Northwestern Railway and the Narrow Gauge Railway Construction Company never received any general mortgage bonds of the Wabash.

44. Q. This contract provides that after the road is constructed it shall be leased to the Wabash by the Des Moines North Western, was such a lease made? A. There was.

45. Q. Now, at about this time there was a railroad projected from Des Moines to Boone? A. Yes.

46. Q. And that was part of the same general plan?

A. It was.

47. Q. Who built that road? A. Gen. G. M. Dodge.

48. Q. That was known as what?

A. The St. Louis, Des Moines & Northern Railway.

49. Q. Please state whether or not you participated in the work of acquiring the property here in Des Moines which was intended for terminal purposes? A. I did.

125 50. Q. When was the acquisition of this property commenced? A. Early in the year 1881.

51. Q. What did you do in connection with the purchasing of that property?

A. I negotiated for the purchase of all of it except where condemnation proceedings were necessary.

52. Q. And who looked after the condemnations?

A. The firm of Parsons & Runnells.

53. Q. Who laid out the plans which determined in a general way what property should be acquired for this purpose?

A. Mr. Lincoln, the engineer of the Wabash, St. Louis & Pacific Railway Company.

54. Q. What relation did the firm of Parsons & Runnells sustain to the Wabash?

A. They were local attorneys of the Wabash at Des Moines.

55. Q. Where did the money come from to pay for this property?

A. The Wabash, St. Louis & Pacific Railway Company advanced the money.

56. Q. If it was necessary for you to secure the approval of the vouchers for money paid to acquire this property before they were sent in to the Wabash, St. Louis & Pacific Railway Company, what was the approval you were required to obtain? A. J. S. Clarkson's.

57. Q. Then what you did was to negotiate the purchases, the payments to be made subject to Mr. Clarkson's approval?

A. Yes,

58. Q. Now, did you negotiate the purchases yourself, or did you use some real estate agents?

A. Both; we utilized the services of a real estate agent and in some cases I made the contracts direct.

59. Q. What was the occasion for using the real estate agents?

A. We wanted to prevent the transactions from becoming a public matter, and for that reason we took some of the titles in the name of different Wabash officials.

60. Q. I think some of that property was acquired in the name of Gen. Dodge, am I right about that? A. Yes.

61. Q. By Gen. Dodge you mean Gen. G. M. Dodge?

A. Yes sir.

126 62. Q. And for the property that was taken in that way who advanced the money? A. Gen. Dodge.

63. Q. Was any money for the acquisition of the property that was acquired in Des Moines advanced by any one except Gen. Dodge and the Wabash, St. Louis & Pacific Railway Company? A. There was not.

64. Q. Referring to Plaintiffs' Exhibit No. 4, the contract of January 2, 1882, this contract provides in the second paragraph that the expense incurred in connection with the acquisition and improvement of the property there referred to shall be borne one-half by the Des Moines & St. Louis Railroad Company and one-fourth each by the Des Moines Northwestern Railway Company and the St. Louis, Des Moines &

Northern Railway Company; as a matter of fact, did either of those companies that I have named pay any part of the cost of acquiring or improving this property?

Complainants' counsel object to the question because the evidence is incompetent to vary or contradict the terms of the written contract referred to.

A. They did not.

65. Q. What means did you have of knowing by whom these payments that you have referred to were made?

A. I attended to the disbursement of the funds used in buying this property and making improvements.

66. Q. Now, you were at that time a stockholder in the Des Moines Northwestern Railway Company? A. Yes.

67. Q. In connection with that matter of your knowledge with reference to the payment of the money in Des Moines, do you remember checking over the amounts expended by Gen.

Dodge within the city limits of the city of Des Moines
127 for the purpose of an adjustment of that matter between himself and the then Wabash Company?

A. I remember it.

68. Q. And who, if anyone, representing the then Wabash Company was here at that time with you making this list of the expenditures by Gen. Dodge inside of the city limits of Des Moines?

A. Morris Trumbull was here representing the Wabash on or about May 31, 1882.

69. Q. And at the same time you checked up with Mr. Trumbull, did you not, the cost of the St. Louis, Des Moines & Northern Railway from the city limits of Des Moines to Clive and the cost of the Des Moines Northwestern Railway from Clive to Waukeez? A. I did.

70. Q. I call your attention to a paper attached to the deposition of Mr. Tobin headed "G. M. Dodge paid Narrow Gauge Railway Construction Company, now charged to the Des Moines Real Estate, certified to be correct by F. M. Hubbell, President Construction Company," dated May 30, 1882, is that the statement which was made up by you and Mr. Trumbull showing the amount expended by Gen. Dodge within the city of Des Moines? A. It is.

71. Q. I also call your attention to another paper attached to the deposition of Mr. Tobin, headed "Cost of St. Louis, Des Moines & Northern Railroad from Des Moines to Clive," also certified by you and others, dated May 30, 1882; is that a statement which you and Mr. Trumbull prepared at the time referred to showing the cost? A. It is.

72. Q. I also call your attention to another statement headed "Statement of Expenditure by G. M. Dodge, account

of construction St. Louis, Des Moines & Northern Railroad from Clive to Waukee," also certified by yourself and others, dated May 30, 1882, and attached to the deposition of

128 Mr. Tobin, and I wish you would state whether that is a statement prepared by yourself and Mr. Trumbull showing the cost of the road from Clive to Waukee?

A. It is.

73. Q. Now, during the period from 1882 say until about May 1, 1888, how was this terminal property here in Des Moines operated and how was it treated?

A. It was operated by the Wabash, St. Louis & Pacific until that company went into the hands of the Receivers, and from that time operated by the Receivers.

74. Q. Who had paid for it?

A. The Wabash had paid for all of it at that time.

75. Q. And who, was operating the Des Moines & St. Louis Railroad and the Des Moines Northwestern Railway?

A. The Wabash, St. Louis & Pacific Railway Co. was operating the Des Moines & St. Louis Railroad and the Des Moines Northwestern Railway.

76. Q. Did you have anything personally to do with the terminal property during this time, or until about the time Polk & Hubbell acquired from the purchasing committee the Des Moines Northwestern Railway? A. I did not.

77. Q. Do you know what arrangements were made for the maintenance of the property, taxes, and things of that kind during the period before your acquisition of the Des Moines Northwestern Railway?

A. The Wabash, St. Louis & Pacific Railway Company and its Receivers maintained and operated and paid the taxes on the terminal property.

78. Q. Complainants' Exhibits 7, 8, 9, and 10 are some resolutions of January 1, 1885, by the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company, the Des Moines Northwestern Railway Company and the Des Moines Union Railway Company; I wish you would state what, if anything, was done under this set of resolutions with reference to the acquisition of
129 the property by the Des Moines Union Railway Company? A. Nothing whatever.

79. Q. Was anything, in fact, done towards the acquisition of the property by the Des Moines Union Railway Company until after the resolutions adopted on November 8, 1887, by these same railroads? A. There was not.

80. Q. Now, then after the enactment of the resolutions in 1887, as shown by the notices, Plaintiffs' Exhibits, 13, 14 and 15, and the resolution adopted by the Des Moines Union Railway Company November 8, 1887, defendants' Exhibit 202

in the stipulation of this date, what was done towards completing the purchase of the property by the Des Moines Union Railway Company?

A. The Des Moines Union had a meeting on March 1, 1888.

81. Q. Prior to that meeting what was done in the way of conveyances of the property?

A. The deeds for the conveyances of the property were executed and delivered to the Des Moines Union.

82. Q. The deeds you refer to are the deeds from James F. How, James F. How, Trustee, G. M. Dodge, the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railroad Company, which are identified as Plaintiffs' Exhibits 17 to 22 inclusive?

A. Those are the deeds.

83. Q. And this resolution of the Des Moines Union Railway Company provides that on the receipt of the deeds there shall be delivered to the grantors an agreement to deliver to them, as soon as prepared, bonds and stocks; what, if anything, was done with reference to preparing an issue of bonds, or was it in this connection that the trust deed, which is Plaintiffs' Exhibit 23, was prepared, executed and delivered?

A. It was in this connection that the trust deed of the Des Moines Union covering the property purchased was
130 executed. I think it was dated November 1, 1887.

84. Q. You referred to the meeting of March 31, 1888, of the Des Moines Union; I wish you would look at Plaintiffs' Exhibit No. 26 and state whether that is the record of the meeting to which you referred. A. It is.

85. Q. And is this record headed "Des Moines Union Railway Board of Directors Meeting, March 31, 1888," defendants' exhibit 103 in the stipulation signed today, a record of the directors' meeting held on the same day? A. It is.

86. Q. Now, have you the original memorandum of the computation made as the basis for the resolution in Exhibit 25 under which those bonds were issued?

A. I have.

87. Q. And by whom was it made aside from the parts of it which are in your handwriting?

A. Made by the Wabash Company.

88. Q. And when was it made, how long have you had it?

A. I have had it since March 31st, 1888.

89. Q. This statement is the statement defendants' exhibit 281 headed "Property in Des Moines, Iowa, Gen. G. M. Dodge ownership \$51,106.36," in the stipulation of this date, is it not? A. It is.

90. Q. Now, what parts of this memorandum or paper, we have just referred to are in your handwriting?

A. The line, "Add rental paid to the Wabash, St. Louis & Pacific as below, \$7,887.72," and the line "do one-fourth of

net cost of round-house, see below \$3,058.40," then the footing "\$74,088.01," and the line "Add one-half of net cost of round-house, see below \$6,116.80," and the footing "\$382,110.80" are in my hand-writing.

91. Q. This memorandum at the bottom of this statement, "Cost of new round-house, etc. at Des Moines, Iowa,"
131 is the explanation of the round-house items in the statement that precedes it, is it not? A. It is.

92. Q. Now, I wish you would state whether the memorandum that we have been referring to is the memorandum from which was ascertained the amounts due the Wabash or its successors to Gen. Dodge and the Des Moines & Northwestern Railway Company as stated in this resolution of the meeting of March 31, 1888, Plaintiffs' Exhibit 26?

A. It is.

93. Q. Does the memorandum show how the amounts were ascertained?

A. It does show how the amounts were ascertained.

94. Q. In this meeting of March 31, 1888, Exhibit 26, there is a resolution for the purchase from Polk & Hubbell of Lots 3 and 4 in Block 33 in Keene & Poindexter's Addition to Fort Des Moines, is there not? A. Yes.

95. Q. Now, in the resolution of the Des Moines Union of November 8, 1887, defendants' Exhibit 102 it is resolved that the company purchase from Polk & Hubbell two lots, Nos. 2 and 3 in Block 33 of Keene & Poindexter's Addition?

A. Yes, that was an error.

96. Q. What should the description be?

A. Lots 3 and 4 in Block 33.

97. Q. In other words, the resolution of November 8, 1887, refers to the lots referred to in Plaintiffs' Exhibit 26?

A. It does.

98. Q. Were those lots afterwards conveyed by Polk & Hubbell to the Des Moines Union Railway Company by deeds defendants' Exhibits 531 and 532, that are included in the stipulation of this date? A. They were.

99. Q. Now, then, the resolutions that have been referred to passed by the various companies in November, 1887, with
reference to the acquisition of this property provided
132 for an issuance of stock as well as of bonds in payment for it; when were the bonds issued with reference to the meeting of March 31, 1888, that is about when?

A. As soon as we could get the bonds engraved and distributed, it was not very long.

100. Q. It was shortly after that meeting, was it not?

A. Yes sir.

101. Q. You can refresh your recollection by Col. Blodgett's receipt for the bond, defendants' Exhibit 286, that

is in the record here, and state about when the bonds were delivered? A. We delivered the bonds about June 1, 1888.

102. Q. This resolution provided for the issuance of stock as well as bonds; when was this stock issued?

A. April 8, 1890.

103. Q. Why, if you know, was it not issued before that time?

A. Because it had not been determined how much should be issued and because Mr. How suggested that some of the stock be left in the treasury to sell to some other railroad company.

104. Q. I will call your attention to Mr. How's letters of June 28, 1888, defendants' Exhibit 287, and of September 17th, 1888, defendants' Exhibit 288, which are in the stipulation of this date, and will ask you whether they relate to these matters, the letter of June 28th being to you and the other being to Polk & Hubbell? A. They do.

105. Q. I believe that you have already stated that when the Des Moines Union was organized your interest was only indirect as a stockholder in the Des Moines Northwestern Railway Co. A. Yes sir.

106. Q. Did you, or did you not have a small or contingent interest in the stock of the St. Louis, Des Moines & Northern Railway Co.?

A. We were entitled to some stock in the St. Louis, Des Moines & Northern as stockholders in the Narrow Gauge
133 Railway Construction Co., and we were entitled to some stock in the Des Moines Northwestern Railway Co. under the same arrangement through the Narrow Gauge Railway Construction Co.

107. Q. Now, the Des Moines Northwestern Railway Co., and the St. Louis, Des Moines & Northern Railway Co. were both of them practically insolvent?

A. They were both insolvent at that time.

108. Q. Did you and Mr. Polk subsequently purchase the Des Moines Northwestern Railway from the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Co.?

A. We did.

109. Q. Turning to the stipulation made today, I call your attention to the statement headed "New York, October 9, 1886, To the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Co." and to the papers following it down to and including a receipt signed by the Central Trust Co. of New York by G. S. Munn, President, March 7, 1890, defendants' Exhibit 263 to 272 inclusive, and ask you to state whether those are the various propositions and agreements relating to the acquisition of that property by Polk & Hubbell in the first instance and finally by yourself? A. They are.

110. Q. There was first a general proposition and acceptance of it? A. Yes.

111. Q. Then on September 10th, 1887, there was another agreement, more complete and formal, for carrying out the accepted proposition? A. There was.

112. Q. Now, under that the mortgage upon the Des Moines Northwestern was foreclosed and the title acquired by Polk & Hubbell? A. Yes.

134 113. Q. And the Des Moines & Northwestern Railway Co., which was organized to take over the property, issued \$450,000. of bonds secured by mortgage on the property which you had acquired from the Purchasing Committee and those bonds were turned over to the Purchasing Committee?

A. Yes sir.

114. Q. After that, on or about the 1st of March, 1890, you made an agreement, defendants' Exhibit 271, under which you purchased from the Purchasing Committee those \$450,000. of bonds? A. I did.

115. Q. This first proposition of October 9th, 1886, includes "A fourth interest in terminal property at Des Moines and 5027 shares of stock in D. M. N. W. Ry. Co." and this was prior to the transactions in 1887 and 1888 by which the Des Moines Union Railway Co. acquired this terminal property, was it not? A. Yes.

116. Q. The formal agreement that follows this that was made September 10, 1887, provides in its fifth paragraph as follows: "in case, however, the terminal property at Des Moines shall be merged in a terminal company either before or after the transfer of the fourth interest as above, the bonds and stock received from the terminal company in exchange for said one-fourth interest shall be transferred in lieu of the property to Messrs. Polk & Hubbell or their assigns or transferred by them to the committee to be held by the committee as a further security for the payment of the \$450,000. above mentioned," Now, what in fact did the Purchasing Committee turn over to you as constituting the fourth interest in the terminal property in Des Moines referred to in this contract?

A. They turned over 112 Des Moines Union bonds and one fourth of the Des Moines Union stock.

135 117. Q. I wish you would refer to this receipt signed by Wager Swayne contained in the papers recently identified as relating to this transaction and state about when the bonds were turned over to you?

A. About May 29, 1888.

118. Q. And what is the fact as to whether this \$112,000. was one-fourth of the bonds at that time?

A. It was considered a fourth.

119. Q. Now, what was done with those bonds?

A. They were deposited with Wager Swayne as collateral security to the \$450,000. of bonds issued by the Des Moines & Northwestern Railway Co.

120. Q. And that receipt of Wager Swayne's that you have just referred to is his receipt for the bonds received on this deposit? A. Yes.

121. Q. Now, then when was it that the one-fourth of the stock in the Des Moines Union Railway Co. was turned over under this agreement? A. April 8, 1890.

122. Q. Now, did Polk & Hubbell or the Des Moines & Northwestern Railway Co. ever receive anything from the Purchasing Committee or anyone else representing this fourth interest in the terminal property in Des Moines purchased under the contracts referred to, aside from the stock and bonds which you have mentioned? A. We did not.

123. Q. There are a good many allegations in the bill with reference to certain amendments to the articles of incorporation of the Des Moines Union Railway Company made at a meeting of the stockholders of that company held April 8, 1890. In the first place who suggested the making of those amendments? A. A. B. Cummins.

136 124. Q. Do you remember what your attitude was in reference to the amendments when they were first suggested?

A. I don't remember particularly, except by referring to a letter written by Mr. Cummins to Gen. Dodge, he said to Gen. Dodge that I was opposed to it.

125. Q. The letter you refer to is a letter of January 27, 1890, defendants' exhibit 296 contained in the stipulation of this date, from A. B. Cummins to Gen. G. M. Dodge, which says, among other things: "And while Mr. Hubbell was at first disposed to oppose the amendments which I have prepared, after a full explanation with him I believe he will support them."

A. That is the letter I refer to.

126. Q. Now, before going further into that matter, I call your attention to a memorandum defendants' exhibit 297 immediately following that letter of Mr. Cummins, in the stipulation of this date, in the shape of a proposition from Mr. Ashley to you, to sell some stock and bonds of the Des Moines Union Railway Company, dated February 5th, 1890. Now, I wish you would state whether this memorandum of February 5, 1890, and the acceptance immediately following it, is the first agreement made by you with the Purchasing Committee with reference to the purchase by you of any of this stock and bonds?

A. It is the first agreement with reference to buying Des Moines Union stock and bonds.

127. Q. And following that in the stipulation of to-day is a paper defendants' exhibit 298 headed, "Draft of Contract of February 11, 1890, for purchase of Des Moines Union Stock and Bonds;" calling your attention to the original of that draft, in whose handwriting are the interlineations which appear in the first two paragraphs of it?

A. The interlineations in the first two paragraphs are in my handwriting.

128. Q. And in whose handwriting is the third paragraph interlined by lead-pencil?

A. In the handwriting of Col. Blodgett.

129. Q. Now, calling your attention to defendants' exhibit 299 the next paper in the stipulation of to-day, providing for the sale to you of \$67,000 of bonds, and one-eighth of the stock of the Des Moines Union Railway Company, dated February 11, 1890, I wish you would state whether that and a memorandum of agreement defendants' exhibit 300 between the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, and F. M. Hubbell, of the same date, are formal contracts that were made for the purchase of those bonds and one-eighth of the stock by you?

A. They are.

130. Q. Now, when you received the proposition of February 5, 1890, from Mr. Ashley, what did you do?

A. I took it down to No. 1 Broadway and showed it to Gen. Dodge.

131. Q. I notice that the contract as signed by you on the 11th of February 1890, is for only half of the stock covered by this proposition, and 67 of the 135 bonds, how did that happen?

A. Gen. Dodge wanted to participate in the purchase by taking half of the bonds and half of the stock and I consented to it.

132. Q. And then, when the formal contracts were written up, on February 11th, was a contract made with each one of you for the part he took? A. Yes sir.

133. Q. After the conversation with Gen. Dodge on the 5th of February, what did you do?

A. I went up to 195 Broadway to accept the proposition. Mr. Ashley had left the office to go home, and I went from there to the Grand Central depot, found him in the depot, accepted his proposition, and paid him \$10,000 on the trade.

134. Q. Is this receipt which follows your acceptance the receipt which was made, signed then by Mr. Ashley for the \$10,000?

A. Yes, that was signed in the Grand Central depot.

135. Q. Now, it is charged in the bill that you fraudulently induced or obtained the approval of the Des Moines & St.

Louis Railroad Company to this transfer. This contract of February 11th, 1890, provides "Said Purchasing Committee hereby guarantees the approval by the Des Moines & St. Louis Railroad Company of the transfer of said stock to said Hubbell within sixty days." Do you remember why any approval of the Des Moines & St. Louis Railroad Company of this was deemed necessary?

A. Under the contract of 1889, May 10, 1889, the Des Moines & St. Louis Railroad was to have half of the stock of that railroad, then owned by the Purchasing Committee, and Col. Blodgett and I both agreed to protect both sides, that it was proper to have the Des Moines & St. Louis' approval of the contract, and Col. Blodgett prepared the memorandum on that subject.

136. Q. By that you mean what I have just quoted from the contract of February 11, 1890? A. Yes.

137. Q. The contract of May 10, 1889, to which you referred, which is Exhibit P to the bill, also provided with reference to the stock that the certificates should express that they were not transferable without the consent in writing of all of the parties of the second part to that contract. That

may have been also the reason for securing the con-

138. sent of the Des Moines & St. Louis Railroad Company, might it not? A. It was.

At this point a recess was taken until 2 P. M., at which time the examination was proceeded with as follows:

138. Q. In the stipulation of this date, there is a paper, defendants' Exhibit 302, immediately following the letter from Gen. Dodge to yourself, Feb. 18, 1890, headed: "Draft for meeting Board of Directors, May 18, 1890." I show you the original of the draft and ask you if you can state who prepared it. A. This was prepared by Mr. Cummins.

139. Q. Now, turning to the record of the meeting of the directors of the Des Moines & St. Louis Railroad Company, held April 8, 1890, which appears in the stipulation of today as defendants' Exhibit 185, it appears that there were present at the meeting James F. How, C. M. Hays, A. B. Cummins, F. M. Hubbell, H. S. Priest and George S. Grover. How many of those people that were present at that meeting were not at that time connected in some way with the Wabash Company?

A. They were all connected with the Wabash Company excepting myself.

140. Q. What was Mr. Cummins' connection?

A. He was local attorney for the Wabash.

141. Q. And do you remember what office Mr. How held at that time? A. I think he was vice-president.

142. Q. Mr. Hays? A. He was general manager.

143. Q. Do you know who Judge Priest and Mr. Grover were? A. They were attorneys.

It is admitted by complainants that Henry S. Priest was
140 at the time mentioned general attorney for the Wabash Company, and George S. Grover was at the time mentioned assistant attorney.

144. Q. Now, you stated that when you made the purchase you conferred about it with Gen. Dodge, and that he took half of the purchase; what relation did he sustain then to the Des Moines & Northern Railway Company?

A. He was president and principal owner.

145. Q. Do you remember what relation he sustained to the Des Moines Union?

A. He was president of the Des Moines Union.

146. Q. And at this time what relation did you sustain to the Des Moines & Northwestern Railway Company?

A. I was president.

147. Q. And what was your interest in the company?

A. I had the controlling interest in the property.

148. Q. Now, in this stipulation of this date there appears a letter from Gen. Dodge to yourself in New York, dated February 18, 1890, defendants' Exhibit 301, in which he refers to some bonds and one-eighth of the stock. What bonds and stock are referred to in that letter?

A. The bonds and stock of the Des Moines Union Railway Company.

149. Q. You have stated that Gen. Dodge was the principal owner of the Des Moines & Northern Railway Company, and you were the principal owner of the Des Moines & Northwestern Railway Company, and that the other people interested in that sale of stock and bonds were connected with the Wabash Railway Company; was there anybody else at that time interested in the Des Moines Union Railway Company, aside from the people you have mentioned?

A. There was not.

150. Q. Did you later purchase some additional stock in the Des Moines Union Railway Company?

A. Yes, I purchased \$50,000 of stock, and purchased
141 fifty bonds from the Purchasing Committee June 5, 1890.

151. Q. I call your attention to a paper in the stipulation of this date, defendants' Exhibit 305, headed, "Agreement between F. M. Hubbell and Purchasing Committee for sale to Mr. Hubbell of 50 bonds Des Moines Union Ry. Co. and 500 shares of its stock," dated June 5, 1890, and ask you to state whether that is the contract under which this additional purchase of stock and bonds was made. A. It is.

152. Q. It is alleged in the bill that you acquired the stock from the Purchasing Committee, and that thereafter you amended the articles of incorporation of the Des Moines Union Railway Company in order to give the stock value. In the first place, you have already stated, I believe, that Mr. Cummins first suggested those amendments? A. Yes.

153. Q. Was this suggestion made before or after you had acquired the first 500 shares of the stock of the Des Moines Union Railway Company which you bought from the Purchasing Committee.

A. I think the question of amending the articles had been in Mr. Cummins' mind before I bought the first stock, but I am not certain about it.

154. Q. To refresh your recollection on that, I call your attention to the date of the letter of Mr. Cummins to Gen. Dodge, which appears in the stipulation of this date, defendants' Exhibit 296, the letter being dated January 27, 1890, and to the date of the proposition and acceptance of the first purchase of stock.

A. Mr. Cummins was writing to Gen. Dodge advocating that the articles should be amended as early as January 27, 1890. I was in New York February 3, 1890, and purchased for Gen. Dodge and myself \$135,000 of bonds, and \$100,000 of stock, in the Des Moines Union.

155. Q. At the time these amendments were adopted, April 8, 1890, how much of this Des Moines Union stock had you purchased or agreed to purchase from the Purchasing Committee? A. \$50,000.

156. Q. It is charged in the bill that your plan was to so formulate the proceedings of the Des Moines Union Railway Company as to enhance the value of this stock. Now, who was it, in fact, who formulated the amendments to the articles of incorporation of the Des Moines Union Railway Company?

A. A. B. Cummins and W. H. Blodgett.

157. Q. What did you have to do with formulating the amendments? A. Nothing whatever.

158. Q. The bill alleges that you created such relations between yourself and the Purchasing Committee and the Des Moines & Northwestern Railway Company as would, as you believed, enable you to procure the transfer of five-eighths of the capital stock of the Des Moines Union Railway Company to yourself as soon as and when the same should be issued. Now, going back a little here, when you made your contract to buy the Des Moines & Northwestern Railway in 1886, did you know whether there was ever going to be any Des Moines Union Railway Company stock? A. I did not.

159. Q. April 8, 1890, you have said was the date when the stock was issued? A. Yes sir.

160. Q. And when it came to the issuance of the stock of the Des Moines Union Railway Company on that day, to whom was the stock in that company which was acquired in connection with the purchase of the Des Moines & Northwestern Railway Company issued?

A. It was issued to the Des Moines & Northwestern Railway, as I recollect it.

161. Q. And that was what proportion of the stock of the Des Moines Union Railway Company?

A. That was one-fourth.

162. Q. And what is the fact as to whether, ever since that time, that company and its successors, including the Chicago, Milwaukee & St. Paul Railway Company, have owned at least one-fourth of the stock of the Des Moines Union Railway Company?

A. That is true, that one-fourth of the stock of the Des Moines Union has been held by the Des Moines & Northwestern or its successors from that time to this.

163. Q. It is alleged in the bill that you caused to be written into the record-book of the Des Moines Union Railway Company an untrue statement of what transpired at the meeting of April 8, 1890; I wish you would state who prepared the draft of the record of that meeting which was transcribed into the record book of the company?

A. It was prepared by A. B. Cummins.

164. Q. What is the fact as to whether this record truly states what transpired at the meeting referred to?

Complainants' counsel object to the question as calling for the conclusion of the witness, not for any facts.

A. It does correctly and truly state what transpired at the meeting.

165. Q. Now, with reference to the amendments of the articles of incorporation of the Des Moines Union Railway Company, which were adopted at that meeting, what is the fact as to whether every one interested in that company was consulted with reference to those amendments prior to the meeting, and knew just what it was proposed to do?

Complainants' counsel object to the question as calling for a conclusion, and state that it would be proper for the witness to state what communication he had with the parties or what knowledge he had.

A. All the parties interested in the property were present or represented, and there was a full discussion. Everybody knew about the amendments, the details, and all voted for them.

Complainants' counsel move to strike out that part of the answer which states that all the parties interested in the property were present or represented, as being a mere conclusion of the witness and not a statement of fact.

166. Q. State, so far as you know, with whom there had been conferences as to those amendments prior to the meeting of April 8, 1890.

Complainants' counsel object to the question because it is not confined to conferences between the witness and other parties, the question calling for conferences between other parties than himself.

A. The matter of the amended articles had been pending between Mr. Cummins and Mr. Blodgett for some time. They were directed to prepare articles and the result of their efforts was the articles as finally amended; the Des Moines & Northern Railway Company, the Des Moines & Northwestern Railway Company and the Des Moines & St. Louis Railroad Company were represented, together with eight other stockholders holding one share each, and all of the stockholders voted for the amended articles.

Complainants' counsel move to strike out that part of the answer where the witness says that the matter of drafting the amended articles was up before Mr. Cummins and Col. Blodgett for quite a time and they had drafted said articles, because it appears from the answer of the witness that he does not answer of his own knowledge; and also object to that part of the answer in which he says that three railroad companies were represented, because it does not state facts, and is merely stating his conclusions.

167. Q. You have said that Col. Blodgett and Mr. Cummins had been directed to prepare amendments; what, if anything, did you have in mind or refer to as such directions?

A. The directions set out in the meeting of the Des Moines Union.

168. Q. Let me call your attention to the record of the stockholders' meeting held Jan. 3, 1890, defendants' Exhibit 107, contained in the stipulation of this date. I ask you to read what you refer to, if you find it there.

A. "James F. How moved that the question of amending the articles of incorporation of this company, as well as the question concerning the issuing of stock for the purchase price of the terminal property, be referred to attorneys W. H. Blodgett and A. B. Cummins for their investigation and recommendation; the motion was seconded and carried."

169. Q. It is alleged in the bill that this was a plan of yours to render the stock of value. After the articles had

been amended at the meeting of April 8, 1890, and when the stock was issued, what portion of the stock of the Des
146 Moines Union Railway Company did you own at that time when the transaction occurred?

A. One-eighth.

170. Q. What portion of the stock did the railroad which you then controlled—the Des Moines & Northwestern—own at that time? A. One-fourth.

171. Q. And the remaining five-eighths of that stock was held by other people? A. Yes.

172. Q. So that if you were benefiting yourself and your railroad by this transaction, you were benefiting other people to a greater extent? A. That is true.

173. Q. Now then, after this transaction, how long did you continue to own the one-eighth of the stock of the Des Moines Union Railway Company which you held April 8, 1890.

A. I sold and assigned it to the Des Moines, Northern & Western Railway Company in the latter part of the year 1891.

174. Q. In the meantime, and before this one-eighth of the stock of the Des Moines Union Railway Company was sold to the Des Moines, Northern & Western Railway Company, you acquired this additional eighth of the Des Moines Union Railway stock which was purchased by you from the Purchasing Committee under the contract of June 5, 1890, did you not? A. I did.

175. Q. And what is the fact as to whether at the same time that stock in the Des Moines Union Railway Company was sold by you to the Des Moines, Northern & Western Railway Company Gen. Dodge also sold to the last named company the stock then held by him in the Des Moines Union Railway Company? A. He did.

176. Q. The record of the meeting of the stockholders of the Des Moines, Northern & Western Railway Company held Dec. 14, 1891, defendants' exhibit 208 contained in the stipulation of this date, shows that for that stock there was
147 to be delivered to you \$60,000 of the bonds of the Des Moines Northern & Western Railway Company. What were those bonds worth at the time?

A. About 45 or 50 cents on the dollar.

177. Q. Was there any market for them?

A. No market at all.

178. Q. In a letter shown in the stipulation of this date, defendants' exhibit 399 written by Mr. Otteson, secretary of the Wabash Railroad Company, to yourself, of date Oct. 19, 1897, there is this postscript: "Mr. Ashley desires me to say that there has been a small lot of bonds of the Des Moines, Northern & Western offered here as low as 45; he thought

you would like to know this." I wish you would state whether the bonds referred to there were bonds of the same issue as those you received for your Des Moines Union stock?

A. On the same railroad.

179. Q. Was it the same issue of bonds—there might have been a dozen trust deeds on the railroad—were they secured by the same trust deed?

A. It was a mortgage upon the same property, but the bonds were issued in 1895.

180. Q. State whether or not this new issue of bonds was issued to take up the old issue, and was substantially the same amount?

A. Issued to take up a previous issue, and for substantially the same amount.

181. Q. It appears from the records of the Purchasing Committee contained in the stipulation of this date, defendants' exhibit 297 that in 1897 Mr. Ashley reported at a meeting of the committee held Oct. 29th that they had sold \$75,000 of the Des Moines Union terminal bonds at 90½ cents and accrued interest. Do you know of any sales of the Des Moines Union bonds earlier than that date, except what were sold to yourself and Gen. Dodge?

148 A. I do not remember of any.

182. Q. What were those bonds worth in 1890 in February and June, when you and Gen. Dodge purchased them in connection with the purchases of stock?

A. Not to exceed 85 cents; I don't believe they could have been sold for that price.

183. Q. I call your attention to the record of a meeting of the directors of the Des Moines, Northern & Western Railroad Company, held Oct. 4, 1893, defendants' exhibit 209 shown in the stipulation of this date, and also to a record of a meeting of the directors of that company held Jan. 29, 1894, defendants' exhibit 211 also contained in the stipulation of this date, and will ask you to state whether those records show the real transactions by which F. M. Hubbell & Son acquired five-eighths of the stock of the Des Moines Union Railway Company, now owned by them? A. They do.

184. Q. After this meeting of Jan. 29, 1894, that has just been referred to, did F. M. Hubbell & Son pay the obligations that are referred to in the record of this meeting, which were to be paid by them under the resolutions there set out, as the consideration for this stock?

A. Yes, F. M. Hubbell & Son paid all the obligations set out in those resolutions.

185. Q. And what is the fact as to whether F. M. Hubbell & Son have held the stock referred to since the date of that transaction? A. They have.

186. Q. Do you remember, or can you tell, when after this meeting of Jan. 29, 1894, you saw Gen. Dodge?

A. About Feb. 1, 1894.

187. Q. And where? A. In Chicago.

188. Q. What, if anything, did you do in the way of advising him as to the transaction between F. M. Hubbell & Son and the Des Moines, Northern & Western Railway Company, as to this stock?

149 A. I showed him a copy of the records of the meeting, and told him that Hubbell & Son had bought this stock of the company, and he expressed himself as satisfied.

189. Q. What, if anything, was said by you or by him at this time with reference to his taking a part of this stock?

A. I offered to let him have an interest in the stock with me, and he said he did not want it.

190. Q. What, if anything, did he say as to his judgment as to whether it would be valuable at some time?

A. He said he thought it would be valuable at some time, but he did not want to invest in it.

191. Q. What means have you of refreshing your recollection as to this conversation with Gen. Dodge?

A. I have a diary of 1894.

192. Q. At and prior to the time that F. M. Hubbell & Son, in January, 1894, acquired this stock in the Des Moines Union Railway Company, what interest had the Chicago, Milwaukee & St. Paul Railway Company in the Des Moines, Northern & Western Railway Company?

A. Not any interest at all.

193. Q. Had it ever, up to a time after this transaction had any interest whatever in the Des Moines, Northern & Western Railway Company?

A. It had no interest in the Des Moines, Northern & Western Railway Company until several months after the transfer of the 2500 shares of stock.

194. Q. There is set out as Exhibit Q to the bill a contract between Frederick M. Hubbell and others and the Chicago, Milwaukee & St. Paul Railway Company, bearing date March 15, 1894. In the first place, can you tell us when this contract was actually signed and delivered?

A. It was signed on the 17th day of July, 1894.

150 195. Q. Have you any means of refreshing your recollections as to this? A. Yes.

196. Q. What? A. A diary.

197. Q. And prior to the making of this contract, had the Chicago, Milwaukee & St. Paul Railway Company any in-

terest whatever in the Des Moines, Northern & Western Railway Company? A. None whatever.

198. Q. In the stipulation of this date there is a copy of a letter from yourself to Roswell Miller, President of the Milwaukee Co., dated Feb. 22, 1894, defendants' exhibit 308; with whom, representing the St. Paul company, did you have the negotiations which led up to the making of the contract, Exhibit Q to the bill? A. Roswell Miller personally.

199. Q. The letter was written to him prior to the making of the contract? A. Yes.

200. Q. This Exhibit Q to the bill recites that it is executed in consideration of a traffic agreement, and that in consideration of this traffic agreement you and your associates sold and assigned to the Chicago, Milwaukee & St. Paul Railway Company 16,800 shares of the capital stock of the Des Moines, Northern & Western Railway Company, and agreed to sell to the Chicago, Milwaukee & St. Paul Railway Company an additional 6,468 shares of the capital stock of that company, the consideration for the purchase of said 6,468 shares, if the Milwaukee company elected to purchase, to be \$46,200. Now, where did the 16,800 shares of the capital stock of the Des Moines, Northern & Western Railway Company that was transferred and assigned to the Milwaukee Company under this contract come from?

151 A. It was contributed by F. M. Hubbell & Son and Gen. Dodge, who owned nearly all of the stock, and possibly some other stockholders having a small interest.

201. Q. And what, if anything, did F. M. Hubbell & Son receive from the Des Moines, Northern & Western Railway Company for that stock which was turned over under this contract, Exhibit Q, in order to induce the making of the traffic arrangements?

A. Neither F. M. Hubbell & Son, nor Gen. Dodge, nor any other stockholder, got anything at all for it.

202. Q. I wish you would state whether the contract which I now show you contained in the stipulation of this date, defendants' Exhibit 309, and commencing, "This indenture, made this 15th day of March, A. D. 1894, by and between the Des Moines, Northern & Western Railway Company, hereinafter called 'Des Moines Company,' a corporation of the State of Iowa, and the Chicago, Milwaukee & St. Paul Railway Company, hereinafter called the 'St. Paul Company,' a corporation of the state of Wisconsin," etc., is a copy of this traffic agreement that we have been referring to? A. It is.

203. Q. What was it that induced you to make this arrangement with the St. Paul Company which involved the surrender to it of forty per cent. of the stock of the Des Moines,

Northern & Western Railway Company, and an agreement to sell to it 6,468 additional shares for \$46,200?

A. Some time during the summer of 1893, the Milwaukee Company notified the Des Moines, Northern & Western Railway Company that the divisions in freight interchanged between the two companies would be reduced from fifty per cent. to twenty-five per cent. This great reduction in the division

would prevent the Des Moines, Northern & Western
152 Railway Company from earning its interest and operating expenses; and rather than submit to bankruptcy and a foreclosure, we made this arrangement in order to obtain an increase in the division in favor of our company to forty per cent hoping thereby that we could earn sufficient revenue to pay operating expenses and interest on the bonds.

204. Q. Was this contract, Exhibit Q, finally carried out?

A. It was not..

205. Q. The railroad was acquired by the Milwaukee under some other arrangement?

A. Yes, the Milwaukee company acquired a controlling interest in the stock by purchasing Gen. Dodge's stock and stock standing in the name of L. M. Martin. They also purchased Gen. Dodge's bonds, and I think some other small lots; but they had a controlling interest in the stock of the road along about the 8th of December, 1898.

206. Q. Before we take up that matter, this contract, Exhibit Q to the bill, provided for a reduction in the interest rate from five per cent to four per cent—I mean the interest rate of the bonds of the Des Moines, Northern & Western Railway Company—and provided for the foreclosure if this was necessary to accomplish this purpose. What is the fact as to whether all the bondholders were willing to consent to the reduction?

A. We could not obtain the consent of all of the bondholders to the reduction of the rate of interest from five per cent to four per cent.

207. Q. And the foreclosure was had as the record shows here, I suppose?

A. Yes, the foreclosure was had, and the road reorganized under the name of the Des Moines, Northern & Western Railroad Company on or about March 1, 1895, I think.

153 208. Q. I wish you would state whether the following letters shown in the stipulation of this date were letters written by you to Roswell Miller, or by Mr. Miller to yourself, in connection with this foreclosure proceeding and the issuance of the new bonds under it, viz: letter from yourself to Miller dated Nov. 20, 1894, letter from Miller to yourself dated Nov. 24, 1894, letter from Miller to yourself dated Nov.

26,1894, letter from Mr. Miller to yourself of Nov. 21, 1894, and enclosure, letter from yourself to Mr. Miller dated Nov. 22, 1894, letter from yourself to Mr. Miller dated March 1, 1895, letter from Mr. Miller to you dated May 14, 1895, letter from Mr. Miller to yourself dated May 16, 1895, defendants' Exhibits 317 to 325 inclusive were all letters written with reference to this transaction? A. They were.

209. Q. Do you remember whether Mr. Miller sent you some copies of the trust deed of the Chicago, Milwaukee & St. Paul Railway Company for use in preparing the trust deed of the Des Moines, Northern & Western Railroad Company?

A. He did.

210. Q. Now, in the letter to Mr. Miller of May 11, 1895, defendants' Exhibit 341, you state that you enclose a certified copy of the following documents for his files; I wish you would state whether those documents were in the shape of a printed pamphlet, and if you have a copy of that pamphlet before you now?

A. It was in the form of a printed pamphlet, and I have one of them now in my hands.

211. Q. Now, referring to this pamphlet, the first paper set out there is the decree of foreclosure which is marked "Complainants' Exhibit 66," is it not? A. Yes, it is.

212. Q. The next thing set out in that pamphlet is the report of sale, marked "Complainants' Exhibit 67," is it not?

A. Yes.

213. Q. The next thing set out in the pamphlet is the 154 decree confirming the sale, which is marked "Complainants' Exhibit 68," is it not? A. Yes.

214. Q. What is the next thing set out in that pamphlet?

A. The next thing is the deed from Geo. F. Henry, Commissioner, to the Purchasing Committee, Gen. Dodge, F. M. Hubbell and F. C. Hubbell.

215. Q. Is that deed, Plaintiffs' Exhibit 69? A. Yes.

216. Q. The next thing?

A. Articles of incorporation of the Des Moines, Northern & Western Railroad Company.

217. Q. The same thing as Plaintiffs' Exhibit 70? A. Yes.

218. Q. What is the next thing set out there?

A. Resolution of the Board of Directors of the Des Moines, Northern & Western Railroad Company.

219. Q. Of what date, does it show?

A. I don't see that it does.

220. Q. They are resolutions for the purchase of the road from the Purchasing Committee? A. Yes.

221. Q. What follows then?

A. The deed follows the resolution.

222. Q. Is that deed the same deed as Plaintiffs' Exhibit 71? A. Yes.

223. Q. Were any steps taken in connection with the foreclosure, so far as you know, without the knowledge of Mr. Miller? A. He was consulted at every step.

224. Q. You said a while ago that the acquisition of the property by the Chicago, Milwaukee & St. Paul Railway Company was through the purchase made in 1898, I wish you would state whether the following letters, which are contained in the stipulation of this date, viz: letter from Roswell Miller to yourself of Nov. 16, 1898, defendants' exhibit 409, another letter from Roswell Miller to yourself of November 18, 1898, defendants' exhibit 410, two letters from him to yourself of

Nov. 22, 1898, defendants' exhibits 411 and 412, a letter 155 from you to Roswell Miller of Nov. 22, 1898, defendants' exhibit 413, a letter from Roswell Miller to yourself of Nov. 23, 1898, defendants' exhibit 414, a letter from yourself to Roswell Miller of Nov. 26, 1898, defendants' exhibit 415, a letter from Roswell Miller to yourself of Nov. 28, 1898, defendants' exhibit 416, a letter from P. M. Myers, Secretary, to you, of Nov. 28, 1898, defendants' exhibit 417, a letter from Roswell Miller to you of Dec. 2, 1898, defendants' exhibit 418, a letter from Roswell Miller to you of Dec. 2, 1898, defendants' exhibit 419, a letter from yourself to Roswell Miller of Dec. 3, 1898, defendants' exhibit 420, were all of them letters written in connection with this transaction?

A. They were.

225. Q. This letter of Dec. 3, 1898, from yourself to Roswell Miller, has on the copy this memorandum; "Delivered a map of Des Moines Union from 12th St. to 28th, to Roswell Miller, Frank S. Bond, in New York, Dec. 8, 1898. It had the names of grantee on each tract. F. M. Hubbell." Please state who made the memorandum on the copy? A. I did.

226. Q. What is the fact as to whether you did deliver such a map? A. I did deliver such a map.

227. Q. The letter of Mr. Miller to yourself that has just been referred to, dated Dec. 2, 1898, refers to the contract between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines & Northern Railway Company, the St. Louis, Des Moines & Northern Railway Company; and in the letter referred to from him to you, of date Dec. 2, 1898, he says: "I observe that the contract between the Des Moines Union Railway Company and the Des Moines, Northern & Western Railroad Company is only for twenty years; I think it should be for fifty years. Have you any objections to extending it so long?"

What contract is referred to in those two letters?

156 A. The contract of May 10, 1889, as ratified July 31, 1897.

228. Q. Referring to the letter again of Dec. 2, 1898, was there any other contract between the Des Moines Union Railway Company and the Des Moines, Northern & Western Railroad Company except the contract of July 31, 1897?

A. No, there was no other contract except the contract of July 31, 1897.

229. Q. In connection with this sale that was made to the Chicago, Milwaukee & St. Paul Railway Company, did you have a conference with Mr. Miller on the 8th of December, 1898, in New York? A. Yes.

230. Q. Have you any means of refreshing your recollection as to what took place at that time? A. Yes.

231. Q. What? A. A diary.

232. Q. Anything else?

A. I think I wrote a letter to my firm about it.

233. Q. I call your attention to a letter signed by you bearing the letterhead of five hotels including the Hotel Imperial, New York, dated December 8, 1898, addressed to "Dear Brother and Son," defendants' exhibit 421 in the stipulation of this date; I ask you if that is the letter to which you refer?

A. It is.

234. Q. From what place was the letter written?

A. The Hotel Imperial, New York.

235. Q. Now, can you state, Mr. Hubbell, whether at that time you had any discussion with Mr. Miller as to the ownership of this 5/8 of the Des Moines Union stock by F. M. Hubbell & Son? A. I had.

236. Q. It is alleged in the bill that the signing of the agreement of July 31, 1897, Exhibit R, by yourself as president and Denman as secretary of the Des Moines, Northern & Western Railroad Company was a fraud on the Milwaukee Company insofar that it attempted to give the consent of the Des Moines Northern & Western Railroad Co. to the transfer of this 2500 shares of stock in the terminal company by the railroad company to the Hubbells; as a matter of fact, you have already testified, I believe, that that stock was not acquired from the Des Moines, Northern & Western Railroad Company?

A. No, it was acquired from the Des Moines, Northern & Western Railway Co.

237. Q. And it was acquired prior to the acquisition of any interest in the Des Moines, Northern & Western Railway Co. by the Milwaukee Co.? A. Yes.

238. Q. Now, I wish you would state whether after Mr. Miller had been furnished with a copy of the contract of July 31, 1897, and before he took the bonds and stock from you in 1898, and after this matter of the ownership of this stock by F. M. Hubbell & Son had been discussed with him,

he made any objection whatever to the signing of the contract by yourself and Mr. Denman? A. He did not.

239. Q. Did this negotiation on Dec. 8, 1898, in New York with Mr. Miller result in an agreement between you and him as to the sale by you and a purchase by him of the stock and bonds of the Des Moines, Northern & Western Railroad Co.?

A. He was ready to buy our bonds and stock if I would write him a letter that the Des Moines, Northern & Western Railroad Co. should give him a contract with the Des Moines Union the same as the present contract for one hundred years.

He pressed me hard to sign such a letter, I refused and
158 told him that I would come back to Iowa and see if we could get him a contract extending the contract of July 31st, 1897.

240. Q. And was that the outcome of the negotiation on the 8th of December, 1898 in New York?

A. That was the outcome of it.

241. Q. Do you remember when, in fact, the Chicago, Milwaukee & St. Paul Railway Co. purchased those bonds and that stock which were owned by F. M. Hubbell & Son?

A. The purchase was made Dec. 29, 1898.

242. Q. During this interval between Dec. 8, 1898, when you left Mr. Miller in New York, and Dec. 29, 1898, when this trade was closed, what, if anything, was done towards preparing a new lease for the Chicago, Milwaukee & St. Paul Railway Co.?

A. Mr. Cummins prepared a new contract for the Chicago, Milwaukee & St. Paul Railway Co. and I submitted it to Mr. Miller in Chicago on Dec. 27, 1898.

243. Q. Now, I wish you would state whether defendants' exhibit 430, the contract headed "Terminal Contract between Des Moines Union Railway Co. and Des Moines, Northern & Western Railroad Co." beginning "This agreement made and entered into this . . . day of December, 1898," and unsigned, which appears in the stipulation of this date, is the contract which you submitted to Mr. Miller as you have stated?

A. It is.

244. Q. Attached to this contract there is a memorandum signed by yourself; when was that memorandum made?

A. It was made immediately on my return from New York, as I remember.

245. Q. From which trip to New York?

A. The trip of Dec. 29th.

246. Q. By whom was this proposed contract prepared?

A. By A. B. Cummins.

247. Q. Who was present when you took it up with
159 Mr. Miller in Chicago? A. Geo. R. Peck.

248. Q. What relation did he sustain to the Chicago, Milwaukee & St. Paul Railway Co.?

A. He was one of the attorneys, he may have been the general attorney, I think he was the head of the legal department.

249. Q. Now, was this contract agreed to?

A. Mr. Miller objected to Sec. 14 and he had Mr. Peck prepare a substitute for Sec. 17.

250. Q. In this contract opposite Sec. 14 are the words "Objected to by Roswell Miller Dec. 27, 1898," in ink; in whose handwriting are they?

A. That is my handwriting.

251. Q. And there is interlined in Sec. 11 the words "Provided, however, that no settlement involving more than \$500. shall be made for any claims of personal injury or death, except with the consent and approval of the said Des Moines, Northern & Western Co.;" in whose handwriting are those words which are interlined in ink in this section?

A. Roswell Miller's.

252. Q. There is opposite Sec. 17 "Mr. Geo. R. Peck prepared new Sec. 17, which is hereto attached. Mr. Miller objected to this one, F. M. Hubbell;" who wrote that?

A. I did.

253. Q. Sec. 17 following the original section of the same number has the words at the bottom of it in ink "This Section No. 17 was prepared by Geo. R. Peck as substitute for No. 17 as drawn by Mr. Cummins, Dec. 27, 1898, F. M. H.;" who prepared that? A. It was prepared by Mr. Peck.

254. Q. Did you and Mr. Miller finally reach an agreement on Dec. 27, 1898, when you had the draft of the proposed contract under consideration?

A. No, he said he would go on with the purchase of the stock and bonds and take his chances on the contract in 1918.

160 255. Q. What did you split on in the negotiation on Dec. 27, 1898? A. Sec. 14.

256. Q. Of the original contract as prepared by Mr. Cummins? A. Yes.

257. Q. Have you any means of refreshing your recollection of this transaction aside from or in addition to the memorandum which is attached to the draft of contract which you took up with Mr. Miller Dec. 27, 1898?

A. I think I have a memorandum of it in my diary and also letters I wrote to my firm.

258. Q. In connection with this meeting was there any talk about their purchasing from F. M. Hubbell & Son, or F. M. Hubbell & Son selling any stock of the Des Moines Union Railway Co., if so, what was it?

A. Mr. Miller wanted to buy our \$250,000 of stock, but I refused to sell.

259. Q. It is alleged in the bill that this Des Moines Union Railway Company's stock was never intended to have any value; how did you get at the valuation of \$1,149,731.09 stated in this draft of contract considered Dec. 27, 1898, as the cost of the terminal property up to that time?

A. That was the sum of the par value of the stock then issued and the bonds outstanding at that date and the floating debt.

260. Now, this draft of contract that was considered Dec. 27, 1898, by yourself and Mr. Miller provided for the payment of 5% upon this cost including capital stock at par; what is the fact as to whether upon this part of the contract you agreed with Mr. Miller?

A. Yes, I agreed with Mr. Miller on that part of the proposed contract.

Complainants' counsel object to the statement as to whether that part of the contract was acceptable to the parties that were negotiating, and also object to all testimony in reference to negotiations between Hubbell and Miller in reference to this draft of contract, because the contract was never completed or executed and the negotiation failed to materialize into a contract.

Complainants' counsel now move to strike out of the testimony of the witness all that related to the negotiations between himself and Mr. Miller in reference to a new contract, or the draft of contract mentioned, because it is not claimed that said negotiation ever resulted in a contract, or that said draft of contract was ever executed, or that the negotiations are binding, because it shows a mere effort to adjust the matter which never resulted in a completed agreement.

261. Q. This sale to the Chicago, Milwaukee & St. Paul Railway Co. of the stock and bonds of F. M. Hubbell & Son, you have said, was consummated on the 29th of December, 1898, where was the sale consummated?

A. In New York City.

262. Q. Did you have any negotiations during the next year with the Chicago, Milwaukee & St. Paul Railway Co. looking to a new contract between the company or the Des Moines, Northern & Western Railroad Co. and the Des Moines Union Railway Co.? A. I did.

263. Q. I wish you would look at the memorandum defendants' exhibit 456 which is in the stipulation of this date. "This figure made by Earling Oct. 17, 1899," and state in whose handwriting that memorandum is that I have just read?

A. It is in my handwriting.

264. Q. In whose handwriting is the memorandum in ink at the bottom "Mr. Earling would not say what he wanted for

the last 25 years, but would talk it over with Myers on one of their trips". A. That is my handwriting.

162 265. Q. Where did you get the memorandum, and when?

A. I got it October 17, 1899, I think in Chicago.

266. Q. And from whom? A. Mr. Earling.

267. Q. What matters did you have up with him at that time?

A. An effort to make a new contract between the Des Moines Union and his company.

268. Q. Now, in the stipulation of this date there follows the memorandum I have just shown, a memorandum defendants' exhibit 457 headed "We presented this to Mr. Earling October 17, 1899"; in whose handwriting is that that I have just read? A. It is in my handwriting.

269. Q. And then follows the memorandum "Memoranda for new contract"? A. Yes.

270. Q. What is the fact as to whether that is a copy of the memorandum you presented Mr. Earling October 17, 1899, in connection with the discussion of the matter of a new contract between his company and the Des Moines Union Railway Co.? A. It is.

271. Q. What relation did Mr. Earling sustain to the complainant, the Chicago, Milwaukee & St. Paul Railway Co., at that time? A. He was president or vice-president.

272. Q. Now, there is also in the stipulation of this date a memorandum defendants' exhibit 458 headed "Chicago, Milwaukee St. Paul Ry. Office of Second Vice-President, Chicago, Ill. Memo by Mr. Earling October 17, 1899;" the rest of the memorandum appearing in lead pencil, who wrote the words "Memo by Earling, Oct. 17, 1899?" A. I did.

273. Q. Now, in whose handwriting is the rest of the memorandum which is in lead pencil?

A. Mr. Earling's.

163 274. Q. Where did you receive the memorandum?

A. In Chicago.

275. Q. Now, following the memorandum to which we have just referred in the stipulation of this date there appears a paper defendants' exhibit 459 headed "Memoranda offer made to Mr. Earling in Chicago October 17, 1899;" what is the fact as to whether this paper last referred to is a basis for the lease which you offered to Mr. Earling on that date in Chicago? A. It is.

Complainants' counsel move to strike out the testimony of the witness, F. M. Hubbell, in reference to the conference between himself and Mr. Earling on October 17, 1899, because the same shows merely a negotiation between himself and Mr. Earling which never resulted in an agreement or

contract, and it is not claimed that a final agreement was reached at that conference, or that the negotiations resulted in an agreement.

276. Q. In this stipulation of this date there is a memorandum defendants' exhibit 471 beginning with the words "After expiration of the present contracts" and having written at the bottom of it in ink "Handed to me by Mr. Miller January 31, 1900;" in whose handwriting are the words I have just read written in ink? A. In my handwriting.

277. Q. Where did you obtain this memorandum or from whom? A. I obtained it from Mr. Miller.

278. Q. Which Mr. Miller?

A. Roswell Miller, I do not know whether I was in Chicago or New York, I could tell by referring to my diary.

279. Q. Have you that diary here?

A. It is here in the building.

Not being able to complete the taking of these depositions on this day, I adjourned the further taking of the same
164 until 10:00 A. M. to-morrow, June 1st, 1911.

.....
Examiner.

165 On June 1, 1911, pursuant to adjournment, as above stated, I resumed the taking of said depositions as follows:

Present Wells H. Blodgett, Esq., J. L. Minnie, Esq., and J. C. Cook, Esq., solicitors for complainants, and N. T. Guernsey, Esq., solicitor for defendants.

Frederick M. Hubbell, in continuation of his deposition commenced on yesterday, testifies as follows:

Direct Examination

Resumed by Mr. Guernsey:

280. Q. I wish you would tell us where you were on the 31st of January, 1900, and for what purpose you had gone there, look at January 30th, if the 31st does not show you?

A. (Referring to diary) I went to Chicago on the night of January 30th at the request of Mr. Earling and Mr. Miller and on the 31st of January I had an interview with Mr. Earling and Mr. Miller in Chicago.

281. Q. How much of the day did you spend with them?

A. I spent all day.

282. Q. What took place at that interview, state it from your recollection, using the book to refresh your recollection.

A. I spent all day with Mr. Earling and Mr. Miller. They wanted to buy our stock, I asked \$250,000. for it, they would

agree to nothing, they wanted the use of the terminals and let the other company pay their rent so they could get their rent for nothing.

283. Q. What stock?

A. In the Des Moines Union Railway Co.

284. Q. In all of these negotiations that you have testified to with Mr. Miller, Mr. Earling and other officials of the Chicago, Milwaukee & St. Paul Railway Co., was there
166 any suggestion by any one that the Chicago, Milwaukee & St. Paul Railway Co. or the Des Moines, Northern & Western Railroad Co. did not need any lease, or that they had some rights under the contract of 1882?

Complainants' counsel move to strike out all of the testimony of the witness in reference to his interview with Mr. Miller, the one on January 13, 1900, and his interview with Mr. Miller and Mr. Earling on January 31, 1900, because it appears that there was a mere effort to negotiate an adjustment or negotiate an agreement which did not materialize or result in any agreement or contract.

Complainants' counsel also object to the last question as being immaterial and irrelevant to any issues, and as calling for a mere conclusion and opinion of the witness.

A. There was no suggestion by either Mr. Earling or Mr. Miller that either the Chicago, Milwaukee & St. Paul Railway Co. or the Des Moines, Northern & Western Railroad Co. had any rights other than what were set up in the lease of May 10, 1889, and the ratification of that lease July 31, 1897.

285. Q. Please state whether or not, during any of those conferences, the contract of January 2, 1882, was mentioned?

A. It was never mentioned in any of those conferences.

286. Q. Now, please state whether or not in any of those conferences any one stated that the stock in the Des Moines Union Railway Co. was not intended to have any value, or that in substance.

167 Complainants' counsel object to the question as immaterial and irrelevant.

A. No suggestion was ever made to me by Mr. Miller or Mr. Earling or anyone else that the Des Moines Union Railway Company's stock was of no value.

287. Q. Now, did you on or about the 13th of June, 1900, have any further conversation with Mr. Earling or Mr. Miller about the matter of a new lease from the Des Moines Union Railway Co. to the Chicago, Milwaukee & St. Paul Railway Co.? A. I did.

288. Q. Where did that take place? A. In Chicago.

289. Q. With whom did you have this conversation?

A. With Mr. Earling.

290. Q. What was the occasion for your visit to him?

A. He wanted me to come there and either agree upon a lease or sell our stock.

291. Q. Did you have at that time the matter of the Burlington lease under consideration?

A. We had the Burlington lease under consideration and he objected to allowing any company to have a lease for more than eighteen years.

292. Q. What reason did he give for his objection?

Complainants' counsel object to the question as immaterial.

A. One reason was that they would make no lease to other roads unless he got a long lease for his own road.

293. Q. What road was talking of making a lease to the Burlington?

A. The Des Moines Union Railway Co. was considering a lease to the C. B. & Q. road.

294. Q. Now what, if anything, was said there about
168 a proposition with reference to a new lease from the Des Moines Union to the Milwaukee?

Complainants' counsel object to the question as being immaterial and irrelevant to any issues in this case.

A. He wanted me to make a proposition, and I, in return, asked him to think it over and make us an offer.

295. Q. What, if anything, was said at that time in reference to dividends on the stock of the Des Moines Union Railway Co.?

Complainants' counsel object to the question as immaterial.

A. He was willing that his stock should be considered with par and dividends on the stock be paid.

Complainants' counsel move to strike out this answer because it shows a mere effort to settle or adjust the matter which did not result in any agreement, and also move to strike out all the testimony of the witness in reference to the conversation or conference with Mr. Earling of June 13, 1900, or thereabouts, because it appears that it was a mere effort to settle or adjust a matter and that no contract or agreement was concluded.

296. Q. Did you have any conversation on or about August 31, 1900, with anyone connected officially with the Milwaukee Road with reference to the matter, if so with whom and where?

A. I had a conversation with Roswell Miller August 31, 1900, in New York about a 50-year lease by the Des Moines Union Railway Company to the Chicago, Milwaukee & St. Paul Railway Company. He offered to call the property worth \$1,200,000 and to have the rental fixed at 5% on that amount, that is, \$60,000 a year, his company to pay its 169 share.

297. Q. How about the taxes, operating expenses and all such things?

A. That was all included, to pay the operating expenses, maintenance and taxes, and \$60,000 per year for the use of the property valued at \$1,200,000.

298. Q. As to the two last conversations you refresh your recollection by your diary? A. Yes.

Complainants' counsel move to strike out the evidence in reference to the conversation with Mr. Miller on or about August 31, 1900, because it appears there was a mere effort to compromise or adjust a matter, or an effort to make a contract for the future, and there was no contract concluded and no agreement made, and it was merely an abortive attempt to contract in reference to the matter.

299. Q. In these records covered by the stipulation of May 31, 1911, there is reference to the Heath property, the title to which was taken originally in A. B. Cummins, trustee, why was that title taken in his name as trustee instead of directly, by the Des Moines Union Railway Company?

A. Because the Des Moines Union Railway Company did not have funds with which to buy the property, and the arrangement was that Mr. Cummins would borrow upon the Heath property as much as he could, and the Des Moines Union would pledge its first mortgage bonds in an amount sufficient to secure the balance of the purchase money to Heath.

300. Q. In a paper identified by the stipulation of date May 31, 1911, there is a letter from Mr. O. D. Ashley, president of the Wabash Railroad Company to yourself, of Aug. 7, 1895 defendants' exhibit 388 which says it encloses a 170 draft of application for the listing of bonds. Is this paper which I now show you the draft of the application that was enclosed in that letter from Mr. Ashley to yourself? A. It is.

301. Q. Now, there are some things written on here with a lead-pencil, and some words crossed out. Who crossed out the typewritten words that are crossed out and made the lead pencil interlineations? A. I did.

302. Q. These lead-pencil interlineations are in your handwriting, are they? A. Yes.

303. Q. Will you please read those to the examiner and have him indicate the typewritten words that are crossed out, by placing them in capitals, and have him indicate the lead pencil interlineations made by you by underscoring the words so interlined? A. Yes, it is as follows:

"S. T. Russell, Esq., Chairman,
Stock-List Committee,
New York Stock Exchange,
New York.

Dear Sir:

The Des Moines Union Railway Co. hereby respectfully asks to have placed on the Stock List of the New York Stock Exchange 800 of its First Mortgage bonds for \$1,000 each, Nos. 1/800, amounting to \$800,000. The Bonds bear semi-annual coupons, payable May and November 1st at the office of the Central Trust Co. New York. The bonds are secured by a first mortgage to said Trust Co. dated November 1, 1887, maturing November 1, 1917. The principal and interest of said bonds are payable in gold coin of the present standard.

The principal may be registered at the office

171 The Des Moines Union Railway Co. is a corporation organized in 1884, under the laws of the State of Iowa, and AUTHORIZED the objects of the corporation

"locate, construct, own and operate a railway in, around "and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight-houses, railway shops, stock yards, and whatever may be useful and convenient for the operation of railways in said City, and the "transfer of cars from the lines and depots of one railway "to another, and from said depots to the various manufactories, warehouses, storehouses, or elevators, and from one "manufactory, warehouse, storehouse or elevator to another "as said depots, manufactories, warehouses, storehouses, and "elevators are now constructed or may be hereafter constructed in or around the said City of Des Moines."

The Des Moines Union Railway Co. is the absolute owner of a right of way across the original City of Des Moines from east to west a distance of 4 miles, together with acres of land not laid out into lots ALL OF WHICH IS LOCATED IN THE CENTRE OF SAID City of Des Moines. The Company owns over five miles of main track and branches two miles of second main track and 7 miles of yard track and sidings. AND BRANCHES, 15 MILES OF SIDINGS, the bridge over the Des Moines River, 3 switching engines, the passenger and freight depot, round houses and other build-

ings appurtenant to the conduct of the business of the Company as now carried on.

The terminal facilities offered by this Company are at present shared by the Des Moines & St. Louis R. R. (owned by the Wabash R. R. Co.) the Chicago & Great Western Ry. and the Des Moines Northern & Western Ry. Railroad. These Companies, by agreement, pay monthly, as rental for the facilities used a sum equal to one month's interest on the bonds, besides they pay for their proportion of the expense of operation. In addition the Company derives considerable revenue for switching cars for other railroads (not tenants) and in rents for the use of various portions of the property.

Herewith find specimen of bond, also copy of the recorded mortgage certified by the Trustee with the latter's certificate of its acceptance of the trust.

The Directors of the Company are

CHARLES M. HAYS, J. Ransey, Jr. Vice-Prest. Genl. Manager
Wabash RR. Co. St. Louis, Mo.

H. L. Magee		(Address and position)
F. C. Hubbell	<u>Prest</u>	do <u>D. M. U.</u>
A. B. Cummins		do
H. D. Thompson	<u>Treasurer</u>	do
L. M. MARTIN		do
A. N. Denman		do
F. M. Hubbell	<u>Prest D. M. Nor</u>	do <u>& W.</u>
<u>C. Huttenlocher</u>		

The officers of the Company are

F. C. Hubbell, President;
A. C. Cummins, Vice-President;
F. M. Hubbell, Secretary;
H. D. Thompson, Treasurer.

I enclose check to your order for \$100. in payment of this application.

Respectfully yours

President.

304. Q. In this same stipulation of May 31, 1911, and following the letter of August 2nd, 1895, there is a paper defendants' exhibit 389 headed "Committee on Stock List, New York Stock Exchange, March 1, 1895." State whether that

is the copy of the printed form which was furnished you
173 by Mr. Ashley in connection with the listing of those
bonds? A. It is.

305. Q. I call your attention also to a letter in the
same stipulation of May 31, 1911, dated September 28, 1897,
from yourself to Mr. Ashley, defendants' exhibit 392, in which
you state you enclose a request made by the Des Moines Union
Co. to the committee of the Stock Exchange, to have 800 Des
Moines Union Railway bonds listed, and also to a request dated
September 28, 1897, defendants' exhibit 393, headed, "Com-
mittee on Stock List, New York Stock Exchange, Des Moines
Union Railway Company," which follows the letter last re-
ferred to, and also to a letter from Mr. Otteson to yourself
dated October 19, 1897, defendants' exhibit 399, which is in
this same stipulation of May 31, 1911, in which Mr. Otteson
says: "Enclosed herewith new balance sheet and new state-
ment of receipts and expenditures," stating why he had made
the changes; and I wish you would state whether this ap-
plication to the Stock Exchange dated September 28, 1897,
to which I have referred, and of which I now show you the
printed copy, is the application amended and finally made by
the Des Moines Union Railway Company, as stated in Mr.
Otteson's letter to which I have referred.

A. It is a copy of the same application.

306. Q. And this copy contains the recommendation of
the committee as to the listing of the bonds, the action of the
committee? A. Yes.

307. Q. Is this application dated September 28, 1897, the
only application made by the Des Moines Union Railway Com-
pany for the listing of its bonds under which they are listed
and sold on the New York Exchange? A. It is.

308. Q. I call your attention to two pieces of paper
174 which I now hand you, and ask you whether those are
the figures of the revised balance-sheet sent to you by
Mr. Otteson, secretary of the Wabash Railroad Company, in
his letter that I have referred to of October 19, 1897.

A. They are.

309. Q. Will you please read into the record the state-
ment of receipts and expenditures, and the general balance-
sheet that was enclosed in the letter of October 19, 1897, from
Mr. Otteson to yourself, to which I last referred?

A. I will. They are as follows:

THE DES MOINES UNION RY. CO., ET AL.

135

Receipts and Expenditures.

Receipts

Amounts recd. from the Wabash R. R. Co..... on wheelage basis	\$31,251.14
" " " Des Moines & N. W. Ry. Co. " " "	58,447.66
" " " Chicago Grt. Western Ry. Co. " " "	47,190.71
" " " for outside switching & rent of real estate	10,282.49

\$147,172.

EXPENDITURES

Interest paid on First Mtge Bonds.....	\$28,450
Taxes for year ending June 30, 1897.....	6,260.25
Conducting transportation.....	66,174.27
Maintenance of way and structures.....	15,935.55
" " equipment.....	13,679.33
General expense.....	6,390.11

\$136,889.51

* SURPLUS.....\$10,282.49

GENERAL BALANCE SHEET

Assets

Cost of road and equipment.....	\$1,053,000.
Material and supplies on hand.....	5,279.24
Accounts receivable.....	* 29,939.26
Cash in hands of treasurer.....	16.61

\$1,088,235.11

Liabilities

Capital stock.....	\$400,000.
First Mortgage Bonds.....	628,000.
Bills Payable.....	46,242.99
Pay Rolls June 1897.....	7,739.17
Balance to credit Profit & Loss Acct.....	6,070.95

\$1,088,235.11

175 310. Q. Taking up another matter, is this letter of Dec. 31, 1896, from yourself to Mr. O. D. Ashley a letter you wrote at the beginning of the negotiation leading to the ratification contract of July 31, 1897? A. It is.

311. Q. The letter of Dec. 31, 1896, is defendants' Exhibit 364 in the stipulation of May 31, 1911? A. Yes.

312. Q. In the same stipulation, is the letter of Dec. 31, 1896, from yourself to A. B. Cummins, defendants' Exhibit 363, a letter which you wrote to Mr. Cummins at the same time, with reference to the preparation of a new contract?

A. It is.

313. Q. In the same stipulation I call your attention to a letter of Feb. 31, 1897, from yourself to Col. Blodgett, de-

fendants' Exhibit 367, stating that you enclose a contract prepared by Mr. Cummins, to be entered into between the Des Moines Union, the Des Moines & St. Louis, the Wabash, and the Des Moines, Northern & Western Railroad Company. That was in connection with this negotiation in 1897 which culminated in the contract of July 31st, 1897? A. It was.

314. Q. And in that same stipulation of May 31, 1911, is a letter of March 26, 1897, from Col. Blodgett to yourself, defendants' Exhibit 377, which relates to this same matter, does it not? A. It does.

315. Q. Now, are these two papers in that stipulation of May 31, 1911, No. 1 marked Exhibit F to deposition of Albert B. Cummins, defendants' Exhibit 378 and No. 2 Exhibit G to deposition of Albert B. Cummins, defendants' Exhibit 379 two forms of Section 3 that were enclosed in the letter of Col. Blodgett of March 26, 1897? A. They are.

316. Q. There follow here in this stipulation of May 31, 1911, after some correspondence, various drafts of proposed new contracts, defendants' Exhibits 382, 383, 384 and 385.

176 What is the fact as to whether or not these were prepared and considered in connection with the negotiations that led up to the contract of July 31, 1897?

A. They were prepared and considered prior to the ratification contract of July 31, 1897.

317. Q. As a matter of fact, the ratification contract was made and no new contract was entered into aside from that?

A. That is a fact; no new contract could be agreed upon.

318. Q. Do you remember what it was, or upon what points you failed to agree with the Wabash people?

A. As I remember it, the Wabash people wanted to have the expenses of the freight house borne on a tonnage basis, and we on our part wanted them borne on a wheelage basis, and there we disagreed, so the contract of May 10, 1889, was ratified by the contracting parties.

319. Q. By the contract of July 31st?

A. By the contract of July 31, 1897.

320. Q. Which is Exhibit R to the bill of complaint?

A. Yes.

By Mr. Blodgett:

321. Q. That is the contract generally referred to as the ratification contract? A. Yes.

By Mr. Guernsey:

322. Q. During the period since the Des Moines Union Railway Company acquired this property in 1888, what services have you performed for that company?

A. I have been the secretary and a director, have bought all the additional real estate acquired since March 31, 1888, have negotiated for industries to be located on the tracks of the Des Moines Union, have furnished money to build structures on the Des Moines Union, and received my pay out of rents, and when the rents have reimbursed me for the cost of the structures, the rents from that time on have been turned
177 into the treasury of the Des Moines Union Railway Company. I have done a great deal more that I cannot now remember of.

323. Q. What, if anything, have you done in the way of acquiring property in anticipation of the company's needing it later?

A. Yes, I have acquired property, anticipating that the Des Moines Union would require it later; and when the time came that the company wanted it have sold it to the company at the price of cost and carriage.

324. Q. By that you mean the cost of the property plus interest and taxes?

A. Cost of the property plus interest and taxes.

325. Q. And has this happened only once, or has it happened frequently? A. It has happened a great many times.

326. Q. Where you have owned property abutting on the tracks of the Des Moines Union Railway Company, what concession have you made in the way of abutting damages—anything like that?

A. I waived abutting damages on property on the west side of the Des Moines River up to Fourteenth Street without any compensation.

327. Q. Is that an insignificant matter or a matter of some consequence?

A. It is a matter of very great consequence, because where the abutting property owners would not waive damages, we have in one instance had to pay about \$6,000 for damages to a lot 132 feet long.

328. Q. Where was that with reference to the property of yours that you have referred to? A. About three blocks west.

329. Q. What, if anything, have you had to do with negotiation of leases which the Des Moines Union Railway Company has made with other railway companies aside from the complainants?

A. I have negotiated leases with the Chicago Great
178 Western Company, the C., B. & Q. Company, the Keokuk & Western, the Des Moines & Fort Dodge Railroad, the Des Moines, Iowa Falls & Northern Railway Company.

330. Q. Those are all outstanding leases, are they not?

A. Yes.

331. Q. Now, a lease was negotiated with the Iowa Central at one time quite a number of years ago; did you have anything to do with it?

A. Yes, I gave that attention.

By Mr. Cook:

332. Q. The Iowa Central never came in under that lease, as you understand?

A. No, they abandoned their intention of extending their road to Des Moines, and so never entered into possession under the lease.

By Mr. Guernsey:

333. Q. What had you to do, if anything, in connection with the location of industries on the tracks of the Des Moines Union Railway Company?

A. I have been very diligent in locating industries on the tracks of the Des Moines Union Railway Company.

334. Q. How would that affect the business of the company and of the tenants?

A. It would have a beneficial effect on the business of the Des Moines Union Railway Company, and also upon the revenues of the Wabash and of the Des Moines, Northern & Western Railroad Company and its successor, the Chicago, Milwaukee & St. Paul Company.

335. Q. You were going to look up the relative amount of trackage now, as compared with March 1, 1888; was that done or not, and also the relative amount of business now as compared with 1888. That has not been looked up, either?

A. No.

179 336. Q. What is the fact as to whether there has been a very great increase, both in facilities and in business?

A. A very great increase.

337. Q. What has been done by the company in the way of providing additional passenger facilities?

A. We have built two passenger depots, one on the west side of the river and one in East Des Moines.

338. Q. Are there any of these matters in connection with the development of the property of the Des Moines Union Railway Company,—including the acquisition of additional real estate, the building of additional tracks, the provision for additional passenger facilities, the additional equipment, locating industries on the tracks so as to increase its business and the business of its tenants, or its financial matters, since March 31, 1888, that have not received more or less of your attention?

A. They have all been matters receiving attention from me in every instance.

339. Q. What compensation have you received from the Des Moines Union Railway Company during this period?

A. Not a cent.

340. Q. And what inducements have you had for the performance of these services aside from the increase in value of your stock in the company?

A. None that I can think of.

341. Q. During the period from 1888 covered by this lease of May 10, 1889, has either of the complainants or their predecessors paid to the Des Moines Union Railway Company any money except the amounts due from them under this contract of May 10, 1889, as ratified, except the payment of coal, material or repairs, or other service rendered to them by the Des Moines Union Railway Company?

A. They have not.

180 342. Q. Now, during the earlier period of the Des Moines Union Railway Company, where funds were necessary to buy additional property and to make additions and extensions to the company's plant, how was the money customarily obtained?

A. The Des Moines & Northwestern and its successor, the Des Moines, Northern & Western, and the Wabash road, furnished money on a wheelage basis and received reimbursement by the Des Moines Union Railway Company bonds.

343. Q. And those matters were adjusted how often?

A. Usually every six months or a year, whenever it was most convenient.

344. Q. Has either of those companies made any advancement of money to the Des Moines Union Railway Company for which it has not been reimbursed as you have stated?

A. They have not.

345. Q. Col. Blodgett testified that the Wabash Company placed great reliance on your judgment as to matters in relation to the Des Moines Union; your recommendations as to the acquisition of property in Des Moines and the prices to be paid for it have usually been adopted, have they not?

A. Yes.

346. Q. What has been the situation where there was any diversity of interest between you and the Wabash, have you in mind any instances of that character where the Wabash has either asked for or adopted your suggestions?

A. The Wabash has always examined the various trades, and, as far as I remember, has adopted my recommendations.

347. Q. I do not think you understood my question. I asked you about the cases where your interests and the Wabash were adverse. For instance, take the negotiation in 1897, did the Wabash adopt your suggestions?

A. No, they did not.

348. Q. What I want to get at is what the Wabash did in cases where your interests and the Wabash interests were adverse, so far as asking for or adopting your suggestions?

A. They did not adopt my suggestions where our views were adverse, our interests adverse.

349. Q. Did they ask you to advise them where your interests were adverse?

A. I don't remember that they did.

350. Q. You have already referred to the negotiation in 1897 where you disagreed; do you remember some long-winded negotiation with reference to building a track to Carlondale, or acquiring part of their track to go to Carlondale, where they thought it might not be for their interest to do it, but it might be for the interest of the Des Moines Union or Milwaukee?

A. I remember that controversy and circumstance.

351. Q. Don't you remember that the Des Moines people suggested a good many times it would be a wise thing, and the Wabash did not do it and would not do it?

A. Yes, I remember that.

352. Q. Do you remember an effort to induce the Wabash to consent to the lease to the Burlington or the Keokuk & Western, and whether you could induce it to, until after the Milwaukee had withdrawn its objection?

A. Yes; the Wabash would not consent to the lease until the Milwaukee had withdrawn its objections.

353. Q. Do you remember an effort to induce them to consent to the use of freight facilities for the Des Moines, Iowa Falls & Northern, and whether you could induce them to do this over the objection of the Milwaukee?

A. No, we could not.

354. Q. Has there been any time from the inception of the Des Moines Union down to the present time that the present Wabash Company and its predecessors have not known just exactly what your interests in the property were?

182 A. There has never been a time since the inception of the Des Moines Union that the Wabash people have not known just what our interests were.

355. Q. Has there ever been a time from the inception of the Des Moines Union down to the present time when the Milwaukee Company or its predecessors have not known just exactly what your interests in the Des Moines Union were?

A. The Milwaukee and its predecessors in ownership of the line which we sold them have at all times known what our interest was in the Des Moines Union Railway Company.

356. Q. I call your attention to a map entitled "Map of Des Moines Union Railway Company in Des Moines, Iowa," and wish you would state whether the property described in the deed from the Wabash Railroad Co. to the Des Moines Union Railway Co. dated March 20, 1899, and included in the stipulation of May 31, 1911, is the long irregularly shaped lot in plat marked O. P. Lot 9, N. W. Quarter 8-78-24?

A. It is.

The map referred to is marked "Map referred to in F. M. Hubbell's deposition. J. F. Allen, Examiner."

Cross-Examination

By Mr. Bledgett:

1X. Q. Are you one of the defendants in this case?

A. Yes.

2X. Q. Where did you reside in 1880 and 1881?

A. In Des Moines.

3X. Q. You are the Frederick M. Hubbell who was a party to a contract made Dec. 8, 1880, between Jefferson S. Polk, James S. Clarkson, F. M. Hubbell and J. S. Runnells, of the first part, and the Wabash, St. Louis & Pacific Railway Co., of the second part, providing for or looking to the construction of a railroad from Albia to Des Moines in the state of Iowa? A. I am.

4X. Q. Were you in December, 1880, a stockholder in the corporation known as the Narrow Gauge Railway Construction Co.?

A. I was a stockholder in the Narrow Gauge Railway Construction Co. at that time.

5X. Q. And were you president of the company?

A. Yes, I was president.

6X. Q. Do you remember a contract that was entered into on or about the 8th day of December, 1880, between the Wabash, St. Louis & Pacific Railway Co., the Des Moines Northwestern Railway Co. and the Narrow Gauge Railway Construction Co. providing for the construction of the road of the Northwestern Co. in a northwesterly direction from Panora, in Guthrie County, Iowa? A. I remember it.

7X. Q. Did you execute that contract as president of the Narrow Gauge Railway Construction Co.? A. I did.

8X. Q. Were you afterwards a director or officer of the Des Moines Northwestern Railway Co.? A. I was.

9X. Q. When did you become an officer of the Des Moines Northwestern Railway Co., and what offices did you hold in that company?

A. Director from 1881 to 1886, treasurer from 1881 to 1883, and 1885 to 1886, and assistant treasurer in 1884.

10X. Q. Was the Des Moines Northwestern Railway Co. afterwards, about the year 1889, reorganized under the name of the Des Moines & Northwestern Railway Co.? A. It was.

11X. Q. Did you become a director of the Des Moines & Northwestern Railway Co. upon its re-organization? A. Yes.

12X. Q. What office did you hold in that company?

A. Director from 1887 to 1892 and president from 1887 to 1892.

13X. Q. What terminals in Des Moines were used by the Des Moines Northwestern Railway Co. and afterwards
184 by the Des Moines & Northwestern Railway Co. while you were connected with those companies?

A. The Des Moines Northwestern Railway Co. was leased to the Wabash, St. Louis & Pacific Railway Co. and that company used the terminals that were afterwards conveyed to the Des Moines Union Railway Co. The Des Moines & Northwestern, which was the re-organized company, used the same terminals.

14X. Q. Were you one of the incorporators of the St. Louis, Des Moines & Northern Railway Co.?

A. Yes, I was one of the incorporators.

15X. Q. Did you become an officer of that company?

A. I was treasurer from 1881 to 1883; I was director from 1881 to 1890, secretary and assistant treasurer in 1884, vice-president 1885 to 1888, assistant secretary and treasurer 1889, secretary 1890.

16X. Q. Did you ever subscribe for any stock in the St. Louis, Des Moines & Northern Railway Co.?

Defendants' counsel objects to the question as calling for a conclusion on a matter of law, what constitutes a subscription of stock, and therefore incompetent on that account.

A. I don't remember that I ever did, but I may have done so.

17X. Q. Did you pay any money into the treasury of the St. Louis, Des Moines & Northern Railway Co. on account of any stock in that company subscribed for or held by you?

A. No.

18X. Q. Who was president of the St. Louis, Des Moines & Northern Railway Co. from the time of its organization up to the year 1889?

A. Gen. Dodge was president in 1889.

19X. Q. He was president from the date of the organization, was he not?

A. No, Mr. Clarkson was president in 1881; he was president in 1882; Mr. Clarkson was president in 1883.

20X. Q. Gen. Dodge was president in 1889?

A. Yes sir.

21X. Q. Was the St. Louis, Des Moines & Northern Railway Co., about the year 1889, re-organized under the name of the Des Moines & Northern Railway Co.? A. Yes.

22X. Q. Was the Des Moines & Northern Railway Co. afterwards, about the year 1891, consolidated with the Des Moines & Northwestern Railway Co. under the name of the Des Moines, Northern & Western Railway Co.? A. It was.

23X. Q. Were you an officer of the Des Moines, Northern & Western Railway Co., if so, please state what offices you held in that company?

A. I was president from 1891 to 1895 and a director for the same period.

24X. Q. What terminals in Des Moines were used by the St. Louis, Des Moines & Northern Railway Co. and afterwards by its successor, the Des Moines & Northern Railway Co.?

A. The St. Louis, Des Moines & Northern used the terminals that are now owned by the Des Moines Union Railway Company.

25X. Q. And afterwards by the Des Moines & Northern?

A. And the same terminals were used by the Des Moines & Northern.

26X. Q. What terminals in Des Moines were afterwards used by the Des Moines, Northern & Western Railway Co.?

A. It used the Des Moines Union Terminal property under the contract of May 10, 1889.

27X. Q. Were you one of the incorporators of the Des Moines & St. Louis Railroad Co.? A. Yes.

28X. Q. Did you subscribe for any stock of the Des Moines & St. Louis Railroad Co.?

Defendants' counsel makes the same objection as made before to the former question, as to a stock subscription.

A. Yes, one share.

29X. Q. Did you ever pay any money into the treasury of the Des Moines & St. Louis Railroad Co. on account of any stock subscribed for or held by you? A. No.

30X. Q. Were you a director of the Des Moines & St. Louis Railroad Co.? A. Yes.

31X. Q. And what, if any, offices in that company did you hold?

A. I was secretary in 1881; I was secretary in 1882; I was secretary in 1883 and in 1884 and in 1885; I was secretary in 1886, as near as I can get at it, and secretary in 1887, secretary in 1888, and 1889, and in 1890, and in 1891 and in 1897.

32X. Q. Were you one of the incorporators of the Des Moines Union Railway Co.? A. Yes.

33X. Q. Did you ever subscribe for any stock in the Des Moines Union Railway Co.?

Defendants' counsel make the same objection as made to the other questions as to stock subscriptions, stating that it is incompetent because calling for a conclusion as to the legal effect of what was done or not done.

A. It was understood that eight individuals should take one share each to represent the railroad companies that were going to use the property.

34X. Q. Was that all that was done with respect to stock subscriptions?

Defendants' counsel makes the same objection.

A. Those eight men met as stockholders and directed the management of the company until 1890, when the capital stock was issued to pay the balance due on the Des Moines Union property.

35X. Q. Did you ever pay any money or other thing of value into the treasury of the Des Moines Union Railway Co. on account of any stock at any time held by you in that company?

A. I do not remember of paying into the treasury of the Des Moines Union Railway Co. any money for stock in that company.

36X. Q. In saying money you mean to cover the whole question, you did not pay anything of value into the treasury of the Des Moines Union Railway Co.?

A. Nothing, only twenty-five years of work.

37X. Q. Did you pay for stock in labor?

A. The arrangement was this, there were to be eight directors.—

By Mr. Guernsey:

38X. Q. The question is, whether you paid for stock issued to you in labor?

A. I don't know that I did.

By Mr. Blodgett:

39X. Q. Were you made a director of the Des Moines Union Railway Co. upon its organization? A. Yes.

40X. Q. Were you also made secretary of that company at the time of its organization? A. Yes.

41X. Q. Have you been a director of that company and its secretary ever since the date of its organization?

A. I have.

42X. Q. Do you remember a contract entered into on or about May 10, 1889, between the Des Moines Union Railway Co., the Des Moines & St. Louis Railway Co., the St. Louis, Des Moines & Northern Railway Co., and the Des Moines & Northwestern Railway Co., commonly known as the operating contract?

188 Defendants' counsel objects to that part of the question which states "commonly known as the operating contract."

A. Yes, I remember the lease or contract of May 10, 1889, entered into by the parties.

43X. Q. Did you execute that contract as secretary of the Des Moines Union Railway Co.? A. Yes.

44X. Q. Did you also execute that contract as secretary of the Des Moines & St. Louis Railroad Co.?

A. I will have to see the contract; (referring to paper) yes, I signed it as secretary.

45X. Q. And did you also execute that contract as president of the Des Moines & Northwestern Railway Co.?

A. Yes.

46X. Q. Did you purchase or negotiate for the purchase of any terminal property in the city of Des Moines that was conveyed to James F. How? A. Yes.

47X. Q. Did you purchase or negotiate for the purchase of any terminal property in the city of Des Moines that was conveyed to G. M. Dodge? A. Yes.

48X. Q. Did you purchase or negotiate for the purchase of any property in the city of Des Moines that was conveyed to the Des Moines & St. Louis Railroad Co.? A. Yes.

49X. Q. Whom did you represent in negotiating for the property in Des Moines that was conveyed to How and who provided the funds to pay for said property?

A. The Wabash, St. Louis & Pacific Railway Co. furnished the funds and I represented the Wabash, St. Louis & Pacific Railway Co.

50X. Q. Whom did you represent in negotiation for the property that was conveyed to G. M. Dodge and who provided the funds with which to pay for that property?

A. I represented G. M. Dodge, and he furnished the money to pay for it.

51X. Q. Whom did you represent in your negotiation for the purchase of the property in the city of Des Moines that was conveyed to the Des Moines & St. Louis Railroad Co. and who provided the funds with which to pay for that property?

A. I represented the Wabash, St. Louis & Pacific Railway Co. in those purchases and that company furnished the money.

52X. Q. Was some of this terminal property in the city of Des Moines, which was negotiated for by you first conveyed to the St. Louis, Des Moines & Northern Railway Co. and afterwards conveyed by that company to the Des Moines Union Railway Co.?

A. There were some pieces of that kind.

53X. Q. Whom did you represent in purchasing this terminal property in Des Moines that was first conveyed to the St. Louis, Des Moines & Northern Railway Co. and afterwards conveyed by that Company to the Des Moines Union Railway Co.?

A. In the purchase of the property I represented Gen. Dodge; in the sale of the property I represented no one, while Gen. Dodge directed the sale I didn't have anything to do with it.

54X. He negotiated the sale of the property to the Des Moines Union?

A. Gen. Dodge caused that property standing in the name of the St. Louis, Des Moines & Northern to be conveyed to the Des Moines Union.

55X. Q. Did you have anything to do with obtaining the ordinances from the municipal authorities of the city of Des Moines granting to the Des Moines & St. Louis Rail Road

Co. the right to construct and operate its tracks across 190 and along certain streets and alleys in said city?

A. I had but very little to do with that, the lawyers and Mr. Polk attended to that part of it.

56X. Q. You performed no service in that matter?

A. No.

57X. Q. The Mr. Polk of whom you speak was at that time your partner? A. Yes.

58X. Q. And he was one of the four who entered into the contract in 1880 along with you and Mr. Clarkson and Mr. Runnells? A. He was.

59X. Q. Did you have anything to do with the matter of obtaining ordinances from the municipal authorities of the city of Des Moines granting to the Des Moines Union Railway Co. the right to construct and operate its tracks across and along streets and alleys in said city?

A. Yes, I have done something in that line.

60X. Q. Whom did you represent in your negotiation with the officials of the city of Des Moines respecting the original ordinance that granted to the Des Moines Union Railway Co. the right to construct and operate its tracks across and along certain streets and alleys in said city?

A. I represented the Des Moines Union Railway Co.

61X. Q. Were the same parties or the same interests financing the construction of the Des Moines & St. Louis Railroad that were acquiring terminal properties in the city of Des Moines in the name of J. F. How?

A. The Wabash, St. Louis & Pacific acquired and paid for the property that was conveyed to James F. How.

62X. Q. And was that company also providing the funds with which to construct the Des Moines & St. Louis 191 Railroad from Albia to Des Moines?

A. As far as I know the Wabash, St. Louis & Pacific Railway Co. furnished the funds to build the Des Moines & St. Louis Railroad.

63X. Q. Did not that company agree to furnish the funds in the contract entered into between yourself, J. S. Polk, J. S. Runnells and J. S. Clarkson of Dec. 8, 1880? A. It did.

64X. Q. To what point in the city of Des Moines did the Des Moines & St. Louis Railroad Co. construct its line of railroad? A. To the East line of Sec. 2-78-24.

65X. Q. To what point in the city of Des Moines did the Des Moines & St. Louis Railroad Co. construct its line of road?

Defendants' counsel objects to the question because it assumes that the line of road which belonged to the Des Moines & St. Louis Railroad Co. was constructed inside the city of Des Moines.

66X. Q. Did the Des Moines & St. Louis Railroad Co. construct any railroad in the city of Des Moines?

A. I do not understand that they constructed any railroad; the Wabash, St. Louis & Pacific let the contract to James F. How as agent, and James F. How, as agent, built the road.

67X. Q. You say the Wabash, St. Louis & Pacific let the contract to How, it was the Des Moines & St. Louis let the contract to How, was it not?

A. Maybe it was. The Des Moines & St. Louis let a contract to James F. How as agent of the Wabash, St. Louis & Pacific, to build the Des Moines & St. Louis road. It built the road to the east city limits of Des Moines; it also constructed considerable of the road inside of the city limits that was afterwards conveyed to the Des Moines Union Railroad Co.

68X. Q. Can you state the points between which the road was so constructed in the city of Des Moines?

Defendants' counsel objects to this as not cross-examination, the defendants not going into an examination of this kind.

A. James F. How, as agent, constructed the standard gauge road inside of the city limits up to the round house and to Farnham Street and beyond Farnham Street from the east city limits.

69X. Q. What is Farnham Street now called?

A. Farnham Street at that time is now called Sixteenth Street in West Des Moines. They had to construct it beyond the water works in order to switch their cars in the railroad yards adjacent to the round house.

By Mr. Minnis:

70X. Q. The question is whether the Des Moines & St. Louis Road extended to the east city limits or extended to the points you stated in the city of Des Moines?

A. The Des Moines & St. Louis, or James F. How, agent, constructed the road from Albia to the east city limits and then Mr. How, as agent for the Wabash, constructed the road from the east city limits to a point west of the water works.

By Mr. Blodgett:

71X. Q. And west of Fraham Street?

A. And west of Farnham Street.

72X. Q. How far west of Fraham Street are the water works?

A. The east line of the water works is Farnham Street.

73X. Q. Did the Des Moines & St. Louis Railroad Co., or the Wabash, St. Louis & Pacific Railway Co. as its lessee, ever at any time operate the railroad you have just mentioned in the city of Des Moines?

A. The Wabash, St. Louis & Pacific Railway Co. operated the Des Moines & St. Louis Railroad from Des Moines to Albia and under lease and used the road that was constructed from the east line of the city limits to a point beyond the water works upon the track and property charged in the books of the Wabash, St. Louis & Pacific Railway Co. as property it owned in Des Moines.

At this point a recess was taken until 2:00 P. M. at which time the examination proceeded as follows:

74X. Q. You have stated that the road from Albia to the east line of the city of Des Moines was constructed under a contract entered into between How and the Des Moines & St. Louis Railroad Co.?

A. I think there was such a contract.

75X. Q. That is correct, is it not?

A. I am unable to tell whether it was with the Des Moines & St. Louis or the Wabash.

76X. Q. You have also stated that the road from the east limits to Farnham Street and a little beyond was constructed under a similar contract?

A. I think that was constructed by the Wabash.

Defendants' counsel objects to all of this testimony with reference to the construction of the road as not cross-examination.

77X. Q. Do you understand that there were two contracts or that there was one made between How and the Des Moines & St. Louis and another one between How and the Wabash, St. Louis & Pacific Railway Co.?

A. My belief is that the contract was made between the Des Moines & St. Louis Railroad Co. and James F. How, agent of the Wabash, St. Louis & Pacific Railway Co. It is further

my belief that the Wabash, St. Louis & Pacific Railway Co. built the road from Des Moines to Albia.

78X. Q. And also the road from the east line of the 194 city to Farnham Street?

A. Yes, I believe the Wabash built it.

79X. Q. Do you know whether the road from Albia to the east limits of the city of Des Moines was built under the same contract as the road from the east limits of the city to Farnham Street?

A. The road from the east limits of the city to Farnham Street was not built under any contract so far as I know.

80X. Q. By whom was it constructed?

A. By the Wabash, St. Louis & Pacific Railway Co.

81X. Q. Is it not a fact that the Des Moines & St. Louis Railroad Co. condemned by proceedings in court a portion of the right of way on which the railroad was constructed between the east limits of the city of Des Moines and Farnham Street?

A. We used the corporate name of the Des Moines & St. Louis Railroad Co. to obtain the right of way where it could not be bought by agreement.

82X. Q. You mean used it in condemnation proceedings?

A. Used it in condemnation proceedings.

By Mr. Cook:

83X. Q. In how many instances did they use it in the city of Des Moines? A. I do not know.

By Mr. Blodgett:

84X. Q. You stated that you negotiated for the purchase of real estate in the city of Des Moines that was conveyed to the Des Moines & St. Louis Railroad; now, I will ask you whether the railroad or the portion of the railroad between the east line of the city and Farnham Street was constructed on or over that real estate which you so negotiated for?

A. The railroad was constructed upon the real estate that we acquired for that purpose.

195 85X. Q. Did not the ordinances of the city of Des Moines authorize the Des Moines & St. Louis Railroad Co. to construct the railroad from the east limits of the city to Farnham Street?

A. The franchise was granted to the Des Moines & St. Louis Railroad Co.

86X. Q. In the matter of purchasing real estate and looking after the passage of the ordinances by the city of Des Moines were you acting under the contract of December 8, 1880, between yourself, Polk, Runnells and Clarkson?

Defendants' counsel objects to the question as calling for a conclusion and is incompetent on that account.

87X. Q. Under what contract, if any, were you acting in the matter of purchasing real estate and obtaining necessary ordinances from the city of Des Moines for the construction of this road?

Defendants' counsel objects to the question for the reasons stated above.

A. I don't think we were acting under any contract for the construction of the road inside of the city limits.

88X. Q. Who employed you to render that service?

A. We attended to the purchase of the property for the Wabash, St. Louis & Pacific Railway Co. and they furnished the money.

89X. Q. Had you together with Mr. Polk, Mr. Runnells and Mr. Clarkson entered into a contract with the Wabash, St. Louis & Pacific Railway Co. in which you had promised to perform that service?

A. I don't believe that contract so reads.

90X. Q. Was the road between the eastern limits of the city and Farnham Street constructed at the same time as the road from Albia to the eastern limits of the city.

A. No.

196 91X. Q. What compensation did you receive for your work in purchasing real estate in the city of Des Moines for the construction of its railroad?

A. I never received any compensation for purchasing property in the city of Des Moines.

92X. Q. Did you not regard your compensation for the services performed in the acquisition of property in Des Moines as covered by the contract into which you had previously entered with the Wabash, St. Louis & Pacific Railway Co.? A. I did not.

93X. Q. Did you purchase or acquire any right of way for the Wabash, St. Louis & Pacific Railway Co., outside of the City of Des Moines? A. I did not.

94X. Q. What services did you and your associates perform for the \$10,000 paid you in a lump sum under the contract of December 8, I think it was 1880.

A. I have no recollection that the Wabash paid \$10,000, although it may have done so. It was understood between Mr. Clarkson and Mr. Runnells and Polk & Hubbell that I was not required to spend any time in the building of the Des Moines & St. Louis Railroad.

95X. Q. And did you perform this work and render this assistance in the construction of lines and acquisition of property without any compensation?

A. What property do you mean?

96X. Q. I mean the property in the city of Des Moines, and your services as an officer and director of the Des Moines & St. Louis Railroad Co.?

A. As I said before, I have no recollection that the Des Moines & St. Louis paid \$10,000 to Clarkson, Runnells, and Polk & Hubbell, although it may have done so.

197 97X. Q. At what point did the Des Moines & St. Louis Railroad connect with the road of the Des Moines Northwestern and the St. Louis, Des Moines & Northern?

A. It did not connect at all. The St. Louis, Des Moines & Northern and Des Moines Northwestern terminated at West 28th, and the Des Moines & St. Louis terminated at the east city limits.

98X. Q. And your contract did not contemplate the construction of the line from Albia to a connection with those other roads?

Defendants' counsel objects to this as not the best evidence, that the contract is the best evidence of what it contemplated.

A. The contract itself would be the best evidence, but I don't remember that the two roads were to have a common terminal, or the three roads.

99X. Q. You do not think that the contract with the Wabash, St. Louis & Pacific, dated December 8, 1880, contemplated a connection of the Des Moines & St. Louis with the other lines?

Defendants' counsel objects to this as not the best evidence, that the contract would show.

A. I do not now remember what is in that contract, but it was the understanding right at the start that the Des Moines & St. Louis should terminate at the east city limits and that the property in the city should be held in a different manner.

100X. Q. At the time this contract was made in December, 1880, Polk & Hubbell were interested in a line that extended northwesterly from Waukee, Dallas County, Iowa, were they not? A. They were.

198 101X. Q. Now, the contract reads, "The second party, Wabash, St. Louis & Pacific Railway Co., owns and controls a system of roads, one of which extends as far as Albia in the state of Iowa, and is desirous of extending said railroad to a connection at Des Moines with the railroad of the first parties above mentioned," that was the contract, was it not?

A. The contract speaks for itself.

102X. Q. If the contract does so provide, if that was the object, and that was the intention when you entered into it, would you not say you were expected to aid in the construction of the line that would connect the Des Moines & St. Louis with the other two lines mentioned, one of which you were yourself interested in?

A. No, that part of the contract was abandoned right at the start.

103X. Q. Now you say it was abandoned, was the contract ever changed?

A. The contract never was changed and it never was carried out.

104X. Q. After the making of this contract the Des Moines & St. Louis Railroad was constructed from Albia to Des Moines, was it not? A. Yes.

105X. Q. And a railroad was about the same time, or at the same time constructed from the east line of the city of Des Moines to Farnham Street? A. Yes, and beyond.

106X. Q. Now, the same parties paid for both those lines, did they not? A. No, not in the first instance.

107X. Q. If those lines were paid for by different parties and by different interests, will you state what parties and what interests they were?

A. The Wabash, St. Louis & Pacific Railway Co. and Gen. Dodge built the road from the east city limits to West 28th Street and afterwards an accounting was had of how much money Gen. Dodge had expended inside of the city limits, and the Wabash, St. Louis & Pacific Railway Co. refunded it to him.

108X. Q. Did the Wabash, St. Louis & Pacific Railway Co. refund the money to Gen. Dodge, or was Gen. Dodge reimbursed in another way?

A. He was reimbursed by the Wabash giving him credit on their books of account.

109X. Q. Then the Wabash really paid for it all, did it? A. Finally yes.

110X. Q. Now, was the road between the east city limits and Farnham Street under construction at the same time as the road from Albia to the eastern limits of the city?

A. The road was constructed from Albia to the east city limits first, that was the first construction.

111X. Q. When was that part of the line from Albia up to the eastern limits of the city completed?

A. I don't remember the date.

112X. Q. Could you tell about?

A. Well, I should guess it was the last part of 1882 or early in 1883.

113X. Q. Well, when was the road constructed through the city of Des Moines to a connection with the other lines that have been mentioned at Farnham Street?

A. The road clear through the city was not built until after the Des Moines River bridge was constructed. Gen. Dodge built the road in the first place from West 10th Street or 11th, through to 28th Street. I don't know who built the road from 10th Street down to the depot, but the Des Moines Northwestern ran into the depot in 1881. The St. Louis, Des

Moines & Northern was the next road to come into the terminals, and the Des Moines & St. Louis was finished up to the corporation line sometime, I think, in 1882, and between that time and within a few months rails were laid up to the depot and then trains could be run from Albia to the depot.

By Mr. Cook:

114X. Q. What time in 1882?

A. I don't really think that the Wabash ran into the Union Depot until 1883, but I am not sure, I have no way of telling that that I know of now.

By Mr. Blodgett:

115X. Q. Did the Wabash trains run through from Albia to Farnham Street when they began moving trains?

A. They ran through to the Union Station.

116X. Q. Was that at Farnham Street, the Union Station?

A. No, the Wabash had a lease of the Des Moines & St. Louis and when rails were laid the Wabash operated the road to the Union Station and from there on to the round house, and in switching their business they had to go a considerable distance west of Farnham Street.

117X. Q. Did they have any separate management, or separate manager for that part of the line east of the eastern limits of the city than what they had for that part of the line between Albia and Des Moines? A. No, I think not.

118X. Q. You do not think they had any separate management?

A. I think the Wabash treated this property inside of the city limits just as though it was their own and operated it and paid the bills.

119X. Q. They paid the bills, repaired the track, operated it just the same as they did between Albia and the city limits?

A. I think they operated it just as though it was their own property, that is the Wabash, St. Louis & Pacific.

120X. Q. You mean from Albia clear through up to Farnham Street?

A. I think they operated it just as though it was their own.

121X. Q. At the time this road was constructed was it constructed up to the east line of the city and did it stop there, or was the line being constructed at that same time through the city to Farnham Street?

A. The Wabash did not cease the construction at the east limits of the city, but continued the construction until they laid a broad gauge road to some point west of the waterworks.

122X. Q. And it was all under one management and trains were run over it all in the same way?

A. The Wabash had a lease of the Des Moines & St. Louis and the Des Moines & Northwestern and operated both roads, using all the property inside of the city limits just as though it was their own, because they had paid for it.

Complainants' counsel move to strike out "because they had paid for it" when the books will show who paid for it, and because it is not responsive to the question.

123X. Q. On what date did the Des Moines Union Railway Co. commence supervising the operation of the terminal property in Des Moines? A. May 1, 1888.

124X. Q. And up to May 1, 1888, the Wabash, St. Louis & Pacific Railway Co., or its successors had operated the line between the east limits of the city and Farnham Street the same as it operated any other part of its property, had it not?

202 A. The Wabash, St. Louis & Pacific and its successors operated the Des Moines & Northwestern until it was sold to Polk & Hubbell and it operated the rest of the property until that was sold to some one.

125X. Question read.

A. So far as I know it operated the property until the Des Moines Union took possession?

By Mr. Cook:

126X. Q. And the Des Moines Northwestern and the St. Louis, Des Moines & Northern, or their successors, also operated their trains and cars over the property in the city of Des Moines until the Des Moines Union took charge of the property in 1888?

A. The Des Moines Northwestern was operated by the Wabash, St. Louis & Pacific Railway Co.; I don't know what arrangement the St. Louis, Des Moines & Northern had for running into the city.

127X. Q. But the St. Louis, Des Moines & Northern and its successors operated their cars and engines down to the Union Station at Fifth Street, did it not, up to the time the Des Moines Union took charge of the terminal property?

A. The St. Louis, Des Moines & Northern used the terminal property from 28th Street down to the depot under some arrangement they had with the Wabash, St. Louis & Pacific Railway Co. until the Des Moines Union purchased the property inside the city limits and took possession and operated inside the city.

By Mr. Blodgett:

128X. Q. If I understand you all these companies used this property in the city of Des Moines in reaching the Union Station the same as they used any other part of that road up to May 1, 1888, is that correct?

203 A. The Wabash, St. Louis & Pacific Railway Co. operated from the east limits of the city to a point west of the waterworks and the St. Louis, Des Moines & Northern operated from 28th Street, their terminals, down to the Union Station?

Defendants' counsel move to strike out all the testimony with reference to the building and operation of the road as not cross-examination, it being something which the defendants did not go into and make the same motion to each part of the examination.

129X. Q. Were you the treasurer of the Des Moines Union Railway Co.?

A. I don't remember that I ever was.

130X. Q. Will you turn to the record of May 3, 1889?

A. It seems that I resigned as treasurer May 3, 1889.

131X. Q. Now, I will ask you this question, to your knowledge was any cash money ever paid into the treasury of the Des Moines Union Railway Company by any person or corporation on account of any share or shares of stock of that company that were issued to any one?

A. I understand that the stock of the Des Moines Union Railway Co. was issued for the payment of the property, in payment for the property.

132X. Question repeated.

A. I think all of the stock was issued in payment of the property.

Complainants' counsel move to strike out both of the answers because they are not responsive to the questions and state that the witness, who is an exceedingly intelligent witness, insists on injecting his notions in the case instead of answering a plain question.

133X. Q. How do you intend to answer that question, that there was or was not?

A. Haven't I answered it?

204 134X. Q. You have not answered it direct, you said issued for property?

A. I don't think there was any cash paid in.

135X. Q. You know as treasurer that you never received any? A. No I didn't receive any.

136X. Q. And so far as you know nothing was ever paid in money?

A. Not for stock. I have told you several times that the stock was paid for by the purchase of the property.

Complainants' counsel move to strike out the answer as not responsive to the question, and state that whether stock was issued for the property is one of the disputed points of law in this case.

137X. Q. I hand you a statement that appears in the record of the case as Plaintiffs' Exhibit No. 79, showing all the certificates that have been issued for stock in the Des Moines Union Railway Co. and will ask you whether you prepared that statement or whether it was prepared under your direction from the original books of the Company?

A. It was prepared under my direction from the stock book of the Company.

138X. Q. I notice this statement shows a large number of certificates to have been issued to certain persons therein named for one share and I will ask you to state, if you know, why those single shares were issued to the parties named?

A. To qualify them to act as Directors.

139X. Q. Have all the parties to whom those single shares were issued been members of the Board of Directors of the Des Moines Union Railway Co.?

A. I so understand it.

140X. Q. Did you conduct the negotiation that resulted in the purchase by G. M. Dodge of the 500 shares of stock in the Des Moines Union Railway Co. that this record shows were issued to him on the 8th day of April, 1890?

A. Mr. Ashley, acting for the Purchasing Committee gave me an option to buy \$135,000 of bonds of the Des Moines Union Railway Co. and \$100,000. of its stock, and I showed it to Gen. Dodge and he wanted to have a half interest in it and I consented that he might do so and that is the way he acquired that \$60,000 of stock by paying for 68 of the bonds that were mentioned in my option.

141X. Q. You have read the answer in this case, haven't you? A. Once, I just read it once.

142X. Q. Was it verified by you? A. No.

143X. Q. If it is stated in Paragraph 14 of your answer "that this stock has been at all times bought and sold and treated by the complainants and their assignors as property of value;" I will ask you to look at that statement of shares

issued and say whether it shows one transaction affecting more than one share of stock in the Des Moines Union Railway Co. in which either the buyer or seller was not yourself, or the firm of Hubbell & Son or a corporation in which you or F. C. Hubbell, or both of you, were not at the time officers?

Defendants' counsel objects to the question as argumentative, calling for a conclusion and incompetent on that account.

A. Yes, one through Gen. Dodge.

144X. Q. Have you, or has the firm of F. M. Hubbell & Son, bought or sold any stock of the Des Moines Union Railway Co. since January 29, 1894, or in other words since the date of their purchase from the Des Moines, Northern & Western Railway Co. of $\frac{2}{3}$ of its issued stock?

A. F. M. Hubbell & Son have not sold any of the $\frac{2}{3}$ of the stock. We have negotiated with the Milwaukee & St. Paul many times and Col. Blodgett has suggested once or twice that we ought to sell it to them, but we have not sold it.

145X. Q. You have neither bought nor sold any since about January 29, 1894? A. No.

Complainants' counsel move to strike out the answer to the preceding question, in so far as it refers to any effort to purchase stock or sell it because the witness was not asked the question, and it is a matter of argument that he is advancing on his own behalf.

146X. Q. It is stated in Paragraph 17 of your answer that on or about the first day of January, 1892, you sold all of the stock of the Des Moines Union Railway Co. that you had bought from the Wabash Purchasing Committee to the Des Moines, Northern & Western Railway Co.; now, I will ask you whether you or the firm of F. M. Hubbell & Son owned any stock in the Des Moines Union Railway Co. between the date of that sale in January, 1892, and the date of the purchase from the Des Moines, Northern & Western Railway Co. of the stock now held by the firm of F. M. Hubbell & Son?

A. I would refer you to Exhibit No. 79, only one share, I have had certificate No. 2 for one share ever since 1890, and have got it yet.

147X. Q. And from the time when you sold your stock to the Des Moines, Northern & Western up to the time when F. M. Hubbell & Son bought $\frac{2}{3}$ of the stock you owned only one share. A. That is right.

287 148X. Q. It is stated in paragraph 16 of your answer in this case "that the firm of F. M. Hubbell & Son never acquired a majority of the capital stock of the Des

Moines Union Railway Co. until about the 29th day of January, 1894," and further along in the same paragraph it is stated, "that said stock was transferred to F. M. Hubbell & Son by the Des Moines Union Railway Co. on or about the 4th day of October, 1893;" now, will you please state how this stock came to be transferred to the firm of F. M. Hubbell & Son in October, 1893, when it was not acquired by them until January 1894?

A. It was transferred or pledged by the Des Moines, Northern & Western Railway Co. on the 4th day of October, 1893, as security for a debt that the Des Moines, Northern & Western Railway Co. owed to F. M. Hubbell & Son.

149X. Q. And it was transferred to you at the time it was put up as collateral?

A. Yes, put up as collateral.

150X. Q. It is stated in paragraph 17 of your answer, as follows; "That thereafter, and on or about the 5th day of February, 1890, respondent, Frederick M. Hubbell, acting on behalf of himself and Granville M. Dodge agreed to purchase from said Purchasing Committee 135 bonds of the Des Moines Union Railway Co. and one fourth of its capital stock, and that pursuant to the said agreement separate contracts were made by the said Purchasing Committee with said Hubbell and said Dodge, under which the said Purchasing Committee agreed to sell to the said Hubbell 67 of said bonds and one eighth of said stock, and to said Dodge 68 of said bonds and one eighth of said stock;" now, I will ask you to state who

paid the Wabash Purchasing Committee for those 68 bonds and one eighth of the capital stock of the Des Moines Union Railway Co. which the answer states you purchased on February 5, 1890, from said committee for G. M. Dodge? A. Gen. Dodge.

151X. Q. It appears from the statement of transfer that the 500 shares of stock of the Des Moines Union Railway Co. that were issued to G. M. Dodge on April 8, 1890, were transferred to the Des Moines, Northern & Western Railway Co. on January 5, 1892; now, I will ask you to state, if you know what consideration the Des Moines, Northern & Western Railway Co. paid for that 500 shares of stock?

A. To Gen. Dodge?

152X. Q. Yes.

A. The Des Moines, Northern & Western Railway Co. paid G. M. Dodge \$65,000, in its bonds for one eighth of the capital stock of the Des Moines Union Railway Co. and one half of the capital stock of the Midland Coal Co.

153X. Q. Had you or the firm of F. M. Hubbell & Son acquired any interest in Dodge's one eighth of the capital stock of the Des Moines Union Railway Co. that had been purchased

from the Wabash Purchasing Committee before the date of that sale to the Des Moines, Northern & Western Railway Co.?

A. Neither I nor F. M. Hubbell & Son bought any stock in the Des Moines Union Railway Co. from G. M. Dodge at any time.

154X. Q. Were you a director and president of the Des Moines, Northern & Western Railway Co. on January 15, 1892? A. I think I was president and director.

155X. Q. Was F. C. Hubbell a director and vice-president of the Des Moines, Northern & Western Railway Co. on January 15, 1892? A. I think he was.

156X. Q. Was Mr. A. B. Cummins a director of and general counsel for the Des Moines, Northern & Western Railway Co. on January 15, 1892? A. Yes.

157X. Q. Who was your attorney and legal adviser in Des Moines in the years 1889 and 1890?

A. A. B. Cummins.

158X. Q. Was Mr. A. B. Cummins also the attorney and legal advisor of the Des Moines Union Railway Co. in those years? A. He was.

159X. Q. Was he also the attorney and legal advisor of the Wabash Railway Co. during those years at Des Moines.

A. Yes sir.

160X. Q. I hand you a letter dated June 12th, 1888, which is as follows: "O. D. Ashley, President, 195 Broadway, New York. Dear Sir: I have been asked several times whether a quarter interest in the Des Moines Union Railway stock could be bought, and, if so, at what price. I, of course, am unable to give any satisfactory answer. If you have a price at which you would be willing to part with a quarter interest in the Des Moines Union Railways Company stock and are willing that I should offer it, I would like to do so. If you do not wish me to offer it for sale, shall I refer the parties to you? Yours truly, F. M. Hubbell"; I will ask you if that is your signature and you wrote or dictated that letter?

A. I dictated the letter and the signature is mine.

161X. Q. I also hand you copy of a letter dated June 16th, 1888, which is as follows, "New York, June 16th, 1888, F. M. Hubbell, Esq., Des Moines, Iowa. Dear Sir: Yours of June 12th received. My impression is that the Purchasing Committee will be glad to sell a one quarter interest in the Des Moines Union Railway stocks if they could obtain a fair price for it, but I have always supposed that it would be necessary to confine the sale to such railway companies as would be interested in the station. It seemed to be desirable to offer the stock to the Chicago & Northwestern, if we could get that company to come into the station.

"Was there not an understanding or agreement as to the sale of the stock when the Terminal Company was formed and

would it not be prejudicial to the interest of the whole to part with the stock to outsiders?

"I should like to hear from you on this point, after which I will bring the subject before the Purchasing Committee, as soon as possible. Yours truly, O. D. Ashley;" I will ask you whether you received and now have in your possession or under your control the original of that letter, and if so, will you please state whether this is a true copy? A. Yes.

162X. Q. I also hand you a letter dated June 18th, 1888, which is as follows, "Des Moines Iowa, June 18th, 1888, O. D. Ashley, Esq., 195 Broadway, New York. Dear Sir: Yours of June 16th at hand. I agree with you that the sale of a quarter interest in the stock of the Terminal Company should be made only to a railway company, who will join with the Wabash in making a contract with the Des Moines Union, guaranteeing the interest upon the bonds and operating expenses, etc.

"I think it would be prejudicial to sell any of this stock to outsiders, and I understand it, as you do, that the stock cannot be sold without the consent of the different railroad companies who now form the Terminal Company. In a conversation with some of the Diagonal people three or four weeks ago one of them made the remark that 'they intended to buy an interest in the Terminal property.' Some years ago, in a conversation I had with Mr. Hughitt of the Chicago & Northwestern he desired me to let him know when the property was in such shape that an interest in it could be purchased. A week ago William M. Jones, who now is in St. Paul, came into my office and made inquiries in regard to the Terminal property, and said he represented a railroad company who wanted to buy an interest in the Terminal Company but refused to disclose what railroad company it was, but in the course of the conversation mentioned the C. B. & Q. Whether he mentioned this name to conceal his real object or not, I do not know.

"I do not take any stock in Jones and do not want to have anything to do with him, but it is quite probable that he was instructed by some railroad company to ascertain at what price an interest could be purchased.

"I have given you all the facts. If I can be of any assistance to you let me know, and I will do all I can. Yours truly, F. M. Hubbell." I will ask you whether that is your signature and whether you wrote or dictated that letter?

A. That is my signature and I dictated that letter.

163X. Q. I also hand you a copy of letter dated New York, February 5th, 1890, which is as follows: "O. D. Ashley, Secre-

tary, Dear Sir: I hereby accept the proposition made by you for the Purchasing Committee to me for the sale to me of \$135,000. of Des Moines Union Railway Co. bonds and 212 a $\frac{1}{4}$ interest in the capital stock of that company and hand you now \$10,000 and will pay the balance as soon as you deliver the property. Yours truly, F. M. Hubbell;" I will ask you if you wrote the letter of which that is a copy, and if so, whether you now have in your possession or under your control the original or a copy of the original of that letter? A. I wrote the letter and have a copy of it.

164X. Q. Is the one I hand you a correct copy? A. Yes.

165X. Q. I also hand you a letter dated April 1st, 1890, which is as follows, "O. D. Ashley, President, New York, N. Y. Dear Sir: In our last interview at your office it was understood that you would talk with Mr. Joy and Mr. Wells, of the Purchasing Committee, and write me upon what terms you would sell a one-eighth interest in the capital stock of the Des Moines Union Railway Co. Thinking that this matter might have escaped your memory, I beg to say that I would like to hear from you in regard to it. Yours truly, F. M. Hubbell"; I will ask you to state whether that is your signature and whether you wrote or dictated that letter?

A. That is my signature and I wrote the letter.

166X. Q. I also hand you a letter dated August 19th, 1890, which reads as follows: "O. D. Ashley, President, 195 Broadway, New York. Dear Sir: I have yours of August 15th, and in reply have to say that the one-quarter interest in the stock of the Des Moines Union which was sold by the Purchasing Committee to F. M. Hubbell, together with the 135,000 of terminal bonds was settled and disposed of some time ago. That you may understand this matter fully, I will 213 give you a list of the stock which has been issued and to whom.

"The authorized capital is \$2,000,000. but the amount issued is \$400,000, and a one-eighth interest represents 500 shares.

"Originally your Committee were entitled to one half of the stock and when it came to be issued, the one quarter which was first sold to me, was issued in two certificates and deducted from your half of the stock, namely:

No. 12 to F. M. Hubbell.....	500 shares
No. 14 to G. M. Dodge.....	500 shares
The 400,000 of stock was issued on the 8th day of April, 1890, as follows:	
No. 1 to Dodge	1 share
No. 2 to Hubbell	1 share
No. 6 to James F. How.....	1 share
No. 7 to C. M. Hays.....	1 share
No. 9 to the Purchasing Committee.....	996 shares
Total	1000 shares

"This being one fourth of the entire stock and belongs to the Purchasing Committee. Certificates No. 1 and 2 have been issued erroneously, No. 1 having been assigned in blank by Dodge, No. 2 is assigned in blank by me.

No. 3 to F. C. Hubbell, for.....	1 share
No. 4 to H. D. Thompson, for.....	1 share
No. 11 to D. M. & N. W. Railway Co.....	998 shares
Total	1000 shares

which is the one-fourth interest belonging to the Des Moines & N. W. Ry. Co.

214 No. 5 to L. M. Martin,	1 share
No. 8 to A. B. Cummins,	1 share
No. 10 to the D. M. & Northern Ry. Co.,	998 shares
Total	1000 shares.

Being one-fourth which is owned by the Des Moines & Northern Railway.

No. 12 to F. M. Hubbell,	500 shares
No. 14 to G. M. Dodge,	500 shares.
Total	1000 shares.

This is the 1,000 shares of stock sold by your Committee to F. M. Hubbell, with the 135,000 of bonds.

"Certificate No. 13 has never been issued, and is cancelled in the stock book, for the reason that a mistake was made in it and it was thought better to cancel it than to change the face of the certificate. This makes 4,000 shares which is all of the capital stock of the Company.

I prefer to have all of the members of the Purchasing Committee affix their signatures to the assignment of the 498 shares to me, being a part of Certificate No. 9.

"Please let me hear from you now whether this is perfectly plain and satisfactory. Yours truly, F. M. Hubbell." now, I will ask you if you wrote it? A. Yes.

167X. Q. I also hand you a letter dated October 9th, 1896, which is as follows: "Mr. J. C. Otteson, Secretary, 195 Broadway, New York N. Y. Dear Sir: I am in receipt of yours of the 6th inst. In reply have to say that there was originally \$200,000 of stock owned by the Purchasing Committee of the

Wabash, St. Louis & Pacific Ry. Co. the Committee sold 215 one-half of the stock to G. M. Dodge and F. M. Hubbell,

I think some time prior to April 28th, 1890. There had never been any stock certificates, or stock issued until that date. At that time there was issued \$400,000 of stock, as follows:

1,000 shares to the Des Moines & Northern Ry. Co.

1,000 shares to the Des Moines & Northwestern Ry. Co.

1,000 shares to the Purchasing Committee of the Wabash St. Louis and Pacific Ry. Co.

500 shares to F. M. Hubbell, and

500 shares to G. M. Dodge.

"The stock of the Wabash Company was represented by certificate #9 for 996 shares, and 4 certificatees for one share each, were issued to qualify Directors in the Company to vote.

"Afterwards the Purchasing Committee sold 500 shares to me and the transfer was made August 22nd, 1890. There was assigned by the Purchasing Committee to me, out of Certificate #9, 498 shares and there was re-issued to the Purchasing Committee certificate #15 for 498 shares, which still stand in the name of that Committee. When this sale of 500 shares last named to F. M. Hubbell, was completed the Committee then owned the following stock.

Certificate #15 for	498 shares
Certificate #6 to Jas. F. How, for.....	1 share
Certificate #7 to Chas. M. Hays, for.....	1 share.

Total500 shares.

"On the 1st day of February, 1895, certificate #6 was cancelled and reissued to H. L. Magee, who now holds certificate #27 for one share of stock. On December 9th, 1895, certificate #7 standing in the name of Chas. M. Hays was assigned to Jos. Ramsey, Jr., and reissued to the last named person on that day, by certificate #28, which now stands in the name of Jos. Ramsey, Jr.

"As I understand it, the Purchasing Committee now owns the following stock:

Certificate #15 for	498 shares
Certificate #27 for	1 share
Certificate #28 for	1 share—500 shares.

Yours truly, F. M. Hubbell, Secretary." I will ask you if you wrote that letter and if that is your signature?

A. I wrote that letter and that is my signature.

168X. Q. At the close of Paragraph 17 of your answer in this case it is stated as follows: "These respondents further respectfully show to the court that on or about the 1st day of January, 1892, the respondent, Frederick M. Hubbell, sold the two-eighths of the stock of the Des Moines Union Railway Co. so purchased by him to the Des Moines Northern & Western Railway Co.;" I will ask you to state if you remember who constituted the Board of Directors of the Des Moines Northern & Western Railway Co. at the time of that transaction?

A. F. M. Hubbell, G. M. Dodge, F. C. Hubbell, A. B. Cummins, L. M. Martin, H. D. Thompson, and A. N. Denman.

169X. Q. Who was president of the company at that time?

A. I was president.

170X. Q. What consideration was paid by the Des Moines Northern & Western Railway Co. to you for said two-eighths of stock of said Des Moines Union Railway Co.?

A. \$60,000. of the bonds of the Des Moines Northern
217 & Western Railway Co.

171X. Q. At the beginning of Paragraph 16 of your answer in this case it is stated as follows: "These respondents aver that the firm of F. M. Hubbell & Son never acquired a majority of the capital stock of the Des Moines Union Railway Co. until about the 29th day of January, 1894, and that the said stock was acquired at that time by them for a valuable consideration from the Des Moines, Northern & Western Railway Co., with the knowledge and approval of all of the stockholders of the said company and that the transfer of the said stock to the said F. M. Hubbell & Son was approved by all parties in interest by a contract of which Exhibit R. to the amended bill is a copy, and that said stock was transferred to F. M. Hubbell & Son by the Des Moines Union Railway Co. on or about the 4th day of October, 1893, and from and after said transfer was held and voted by said F. M. Hubbell & Son at all meetings of the Des Moines Union Railway Co., down to the commencement of this suit, with the knowledge and approval of each and every stockholder in the Des Moines Union Railway Co.;" now who constituted the Board of Directors of the Des Moines Northern & Western Railway Co.

at the time it sold that stock in the Des Moines Union Railway Co. to F. M. Hubbell & Son?

A. G. M. Dodge, F. M. Hubbell, F. C. Hubbell, L. M. Martin, A. B. Cummins, A. N. Denman and H. D. Thompson

172X. Q. Who was president of the Des Moines Northern & Western Railway Co. on the date of that sale?

A. I was.

173X. Q. What was the consideration paid to the Des Moines Northern & Western Railway Co. by F. M. Hubbell & Son for said five-eighths of all the issued stock of the Des Moines Union Railway Co.?

A. The Des Moines Northern & Western Railway Co. owed to F. M. Hubbell & Son, \$128,833.33 and Hubbell & Son were also liable as endorsers upon promissory notes to the Metropolitan Trust Co. for \$20,000.; Hubbell & Son agreed to pay those notes amounting to \$148,833.33 and interest and received therefor \$225,000. of the Bonds of the Des Moines Northern & Western Railway Co. and 2,500 shares of the capital stock of Des Moines Union Railway Co. We were to take the bonds at 55 cents on the dollar and the Des Moines Union stock at 10 cents on the dollar.

174X. Q. And that made for 2,500 shares at that valuation, \$25,000. for the stock? A. Yes.

175X. Q. Have you as secretary of the Des Moines Union Railway Co. ever had in your possession, any book or paper wherein any person or corporation subscribed for any definite number of shares of the capital stock of that company?

Defendants' counsel objects to the question as calling for a conclusion as to a matter of law.

A. As I have stated before the capital stock of the Des Moines Union Railway Co. was issued in part payment for the purchase of the Des Moines Union property.

Defendants' counsel objects to the answer as not responsive to the question and as merely giving a conclusion of the witness.

176X. Q. You mean that you have no book and have never seen any book in which any person or corporation subscribed for any given number of shares?

219 Defendants' counsel object to the question for the reason stated above.

A. I never saw any subscription book. It was a matter of contract, the Des Moines Union bought the real estate and paid for it by issuing its bonds and stock.

Complainants' counsel object to the answer and move to strike out that part of it after the words, "I never saw any subscription book" because it is not responsive to the question and is a mere conclusion of the witness.

177X. Q. Have all the certificates of stock of the Des Moines Union Railway Co. been issued by yourself?

A. Yes.

178X. Q. Have they all been issued in the same form?

A. Yes.

179X. Q. How many shares of the capital stock of the Des Moines Union Railway Co. are now outstanding?

A. 4,000 shares.

180X. Q. In this letter written by you to Mr. O. D. Ashley, August 19th, 1890, you state as follows:

"The 400,000 of stock was issued on the 8th day of April, 1890, as follows:

No. 1 to Dodge	1 share
No. 2 to Hubbell	1 share
No. 6 to James F. How	1 share
No. 7 to C. M. Hay	1 share
No. 9 to the Purchasing Committee.....	996 shares

Total1000 shares

"This being one-fourth of the entire stock and belongs to the Purchasing Committee. Certificate No. 1 and 2 have been issued erroneously, No. 1 having been assigned in blank by Dodge, No. 2, is assigned in blank by me.

No. 3 to F. C. Hubbell for.....	1 share
No. 4 to H. D. Thompson, for.....	1 share
220 No. 11 To D. M. & N. W. Railway Co....	998 shares

Total1000 shares

which is the one fourth interest belonging to the Des Moines & N. W. Ry. Co.

No. 5 to L. M. Martin.....	1 share
No. 8 to A. B. Cummins.....	1 share
No. 10 to the D. M. & Northern Ry. Co.....	998 shares

Total1000 shares

Being one-fourth which is owned by the Des Moines and Northern Railway.

No. 12, to F. M. Hubbell.....	500 shares
No. 14, to G. M. Dodge.....	500 shares
Total	1000 shares

This is the 1,000 shares of stock sold by your Committee to F. M. Hubbell, with the 135,000 of bonds."

Now, I will ask you whether either the stockholders or Board of Directors of the Des Moines Union Railway Co. to your knowledge ever passed at any meeting, any resolution authorizing or directing you as Secretary of that company to issue certificates for the 4,000 shares of stock to the parties named in that letter of yours to Mr. Ashley, dated August 19th, 1890? Do you know of any resolution authorizing you to issue that stock in that way before it was issued? A. Yes.

181X. Q. Will you state what the resolution is?

A. "That to complete the payment of such purchase price the President and Secretary are hereby authorized to issue certificates for 3992 shares of stock, which shares including 8 already issued, in behalf of said parties aggregate 4,000 shares as follows".

221 182X. Q. What is the date of that resolution?

A. April 8th, 1890.

183X. Q. The resolution of the Board of Directors of the Des Moines Union or stockholders?

A. I think it was the stockholders.

By Mr. Guernsey:

184X. Q. You notice the directors' meeting authorizes the transfer to yourself and Gen. Dodge, the directors' meeting of the same day which is included in the question?

A. On April 8th, 1890, at a meeting of the Board of Directors of the Des Moines Union Railway Co. I find this; "C. M. Hayes offered the following resolution; 'Resolved that shares of the capital stock of this corporation of the par value of \$50,000 sold by the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Co. to F. M. Hubbell, which sale has been ratified by the Des Moines & St. Louis Railroad Co. be approved, and the transfer thereof to said Hubbell on the books of the company, be and the same is hereby ordered'. C. M. Hays moved the adoption of said resolution and it was thereupon adopted by the vote of all the directors. A. B. Cummins offered the following resolution and moved its adoption, 'Resolved that the sale of \$50,000. of the stock of this company by the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Co. to G. M. Dodge, ratified by the Des Moines & St. Louis Railroad Co. be approved and a transfer thereof to said Dodge upon the books of the company be,

and the same is hereby ordered'. The resolution was adopted by the vote of all of the directors of this company."

By Mr. Blodgett:

185X. Q. When those 4,000 shares were issued on the 8th day of April, 1890, were they not issued in pursuance of that clause of Article 3: the so-called amended articles which provides for the issue of 4,000 shares.

Defendants' counsel objects to the question as calling for a conclusion of law and because the record is here.

A. I am not lawyer enough to decide on the effect of Article 3. The stock was issued under the resolution which I have just read adopted by the stockholders and directors.

186X. Q. Prior to April 8th, and the meeting at which you say the articles were amended had there ever been any action, either by the board of directors or by the stockholders, providing for the issue of 4,000 shares of this stock?

A. The 4,000 shares of stock were issued under resolutions passed April 8th, 1890.

186X. Question repeated. A. No.

187X. Q. Well, was that meeting of the board of directors held before or after the action had been taken respecting the amendment of the articles? A. I don't remember.

188X. Q. There was a stockholders' meeting, was there not, in which it was stated that the articles were amended?

A. Yes.

189X. Q. In Article 3 of that amendment it was provided as follows, "Said 4,000 shares of capital stock shall be issued to the following corporations, and in the following proportions.

"2,000 shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Co. successor in ownership to the Des Moines & St. Louis Railway Co. and the present owner of the property known as the Des Moines & St. Louis Railroad.

223 "1000 shares to the Des Moines & Northwestern Railway Co. successor to the Des Moines Northwestern Railway Co.; and

"1,000 shares to the Des Moines & Northern Railway Co. successor to the St. Louis, Des Moines & Northern Railway Co., and the said shares are hereby declared to be full paid by the transfer of the aforesaid property;" were they not issued in pursuance of that clause in the article so alleged to have been amended?

Defendants' counsel objects to the question as calling for a conclusion of law, and for the further reason that the rec

and already in shows that under that article resolutions were adopted by the stockholders and directors in reference to the stock issued.

A. They were issued under the resolutions that I have just read of the stockholders and directors, and the directors intended to substantially follow the directions in Article 3.

190X. Q. You say that the board of directors followed the provisions of that amendment of the articles in that resolution, is that correct?

A. There were eight directors that had subscribed for one share of stock each, and in the issuing of that stock on April 8th, 1890, it was taken into account that there should be left one share of stock in the name of those eight directors, and then as the Wabash had sold one-fourth of the stock it did not go through the formality of issuing one half of the stock to the Purchasing Committee and then transferring one-eighth to Gen. Dodge and one-eighth to me, but issued it directly to Gen. Dodge and myself.

191X. Q. Instead of issuing it to the companies and 224 then have them transfer it to you?

A. Yes, we avoided one transfer by issuing it just as it was owned, except that there were eight shares issued to qualify the eight directors.

192X. Q. Before the 8th day of April, 1890, there had been nothing done by the Des Moines Union Railway Co., had there to your knowledge that provided for the issue of 4,000 shares of stock of the Des Moines Union Railway Co.?

A. No, that was decided on April 8th, 1890.

193X. Q. It was first decided on at the meeting of the stockholders that adopted that amendment? A. Yes.

194X. Q. There were 4,000 shares issued before or after the meeting, or alleged meeting of the stockholders of the Des Moines Union Railway Co. that was held on the 8th day of April, 1890, at which the articles of incorporation are alleged to have been amended?

A. They were issued after the stockholders' meeting amending the articles.

195X. Q. In Paragraph 17 of your answer in this case it is stated as follows:

"On or about the 5th day of February 1890 the respondent Frederick M. Hubbell, acting in behalf of himself and Greenville M. Dodge, agreed to purchase from said Purchasing Committee 135 bonds of the Des Moines Union Railway Co. and one-fourth of its capital stock, and that pursuant to said agreement, separate contracts were made by the said Purchasing Committee with the said Hubbell and the said Dodge, under which said Purchasing Committee agreed to sell to the

said Hubbell 67 of said bonds, and one-eighth of said stock, and the said Dodge 68 of said bonds and one-eighth of said stock;"

I will ask you if you regard that statement in your answer as correct? A. Yes.

196X. Q. Further along in that same paragraph, Paragraph 17, it is stated as follows: "That thereafter on or about the 5th day of June, 1890, the respondent, Frederick M. Hubbell, purchased additional bonds, and an additional one-eighth of the capital stock of the Des Moines Union Railway Co. from said Purchasing Committee;" I will ask you whether you now consider that statement in your answer correct? A. I do.

197X. Q. Again, further along in that same paragraph 17 of your answer in this case it is stated, "These respondents further respectfully show to the Court that on or about the 1st day of January, 1892, the respondent Frederick M. Hubbell sold the two-eighths of the stock of the Des Moines Union Railway Co. so purchased by him, to the Des Moines Northern & Western Railway Co.;" I will ask you if you now consider that statement in your answer correct?

A. It is correct.

198X. Q. Were the shares you then sold all the stock you then had in the Des Moines Union Railway Co.?

A. Yes, except the one share.

199X. Q. I believe you said that you took the stock bought by F. M. Hubbell & Son from the Des Moines Northern & Western Railway Co. at an estimated value of 10 cents on the dollar? A. Yes.

200X. Q. In Paragraph 17 of your answer in this case, it is stated as follows:

"That thereafter and on the 8th day of April, 1890, the stockholders of the Des Moines Union Railway Co. at a meeting at which the holders of all of its stock were present, including the respondent, the respondents being at that time minority stockholders, unanimously adopted substitutes for Articles 3, 4, 5, and 9 of the articles of incorporation of the said company, and the additional articles 11, 12, 13, 14, and 15. That article 15 of the additional articles so adopted was as follows:

'Article 15. The proceedings of the meeting held December 10th, 1884, with certain preambles including a contract executed on the 2nd day of January 1882, between the Des Moines & St. Louis Railroad Co., the Des Moines Northwestern Railway Co. and the St. Louis Des Moines & Northern Railway Co., consented to by the Wabash, St. Louis & Pacific Railway Co., which now appears as a part of the articles of

incorporation of this company are hereby repealed, stricken out and expunged."

Now I will ask you whether you were present at the meeting referred to in that part of the answer which I have read to you?

Defendants' counsel object to this and all questions on this subject as not cross-examination.

A. I was present.

201X. Q. Did you, as a stockholder vote in favor of changing the articles of incorporation of the Des Moines Union Railway Co. contained in that part of your answer which I have just read to you? A. Yes.

202X. Q. Were you a stockholder in the Des Moines Union Railway Co. at the date of that meeting?

A. Yes sir.

203X. Q. Had you ever subscribed for a share of the capital stock? A. It seems that I did.

204X. Q. Had a share of the stock of the Des Moines Union Railway Co. ever been issued to you at the date of that meeting? A. No, not until after the meeting.

205X. Q. And you do not remember to have ever paid anything for that share?

A. No, we all subscribed for a share of stock to qualify ourselves as directors early in the existence of the company.

206X. Q. But you do not remember, you said before, to have paid any money for it? A. No.

207X. Q. What did you at that time understand to be the object that was to be accomplished by striking out of the articles of incorporation of the Des Moines Union Railway Co., the proceedings of the meeting held on December 10th, 1884, and the contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Co., the Des Moines Northwestern Railway Co., the St. Louis Des Moines & Northern Railway Co., consented to by the Wabash, St. Louis & Pacific Railway Co.?

A. I don't know as I could tell specifically what was to be accomplished, I understood those articles were agreed upon by W. H. Blodgett and A. B. Cummins and I supposed as they were men learned in the law that they had it exactly right and I voted for it.

208X. Q. Then do you not remember what your own purpose was in voting to so amend the articles of incorporation of the Des Moines Union Railway Co. as to strike out of said articles the proceedings of said meeting held December 10th, 1884 and said contract of January 2nd, 1882?

A. I had no purpose in the matter only to follow the suggestion and recommendation of the two lawyers who represented the Wabash Company in the matter.

209X. Q. In that connection you speak of W. H. Blodgett; did you ever confer with him about the amendments before the adoption? A. No, I didn't.

228 210X. Q. Did you see any letter from him respecting them before adopting them?

A. I don't remember.

Not being able to complete the taking of these depositions on this day, I adjourned the further taking of the same until 10 A. M., tomorrow, June 2d, 1911.

.....,
Examiner.

229 On June 2nd, 1911, pursuant to adjournment as above stated, I resumed the taking of the said depositions as follows:

Present: Wells H. Blodgett, Esq., J. L. Minnis, Esq., and J. C. Cook, Esq., solicitors for complainants, and N. T. Guernsey, Esq., solicitor for defendants.

Frederick M. Hubbell, in continuation of his deposition commenced on May 31st, 1911, testifies as follows:

Cross-Examination Resumed

By Mr. Blodgett:

211X. Q. Was the meeting of December 10th, 1884 the meeting at which the Des Moines Union Railway Co. was organized? A. Yes.

212X. Q. The proceedings of that meeting were stricken out? A. Yes.

213X. Q. In Paragraph 28 of your answer you referred to Exhibit A attached to the bill of complaint, now will you look at that exhibit and state whether it is the contract entered into January 2nd, 1882, between the Des Moines & St. Louis Railroad Co., the Des Moines Northwestern Railway Co., the St. Louis, Des Moines & Northern Railway Co., and consented to by the Wabash, St. Louis & Pacific Railway Co.?

A. It is.

214X. Q. Were you familiar with that contract of January 2nd, 1882, before and at the time this meeting was held on the 8th day of April, 1890? A. I was not.

215X. Q. That contract was incorporated in the articles, was it not? A. Yes.

216X. Q. And you were one of the organizers of the company that put that contract into the articles, were you not?

A. I was one of the persons that incorporated the Des Moines Union Railway Co. but at the time of its incorporation I had not any interest in the matter.

230 217X. Q. In paragraph 28 of your answer in this case, it is stated as follows, "That the said F. M. Hubbell & Son, purchased the stock of the Des Moines Union Railway Co. now owned by them, and the said Frederick M. Hubbell purchased stock of said company from said Purchasing Committee, in reliance upon the fact that the Des Moines Union Railway Co. was the owner of the terminal property in controversy." Now, I will ask you to state whether at the time you purchased the stock in the Des Moines Union Railway Co. now hold by you or when you bought the stock from the Purchasing Committee you were familiar with said contract of January 2nd, 1882, to which we have just referred?

A. I was not familiar with it.

218X. Q. The original articles of the Des Moines Union Railway Co., of which you were one of the organizers, contained that contract, did they not?

A. The articles adopted December 10th, 1884, included the contracts of January 2nd, 1882.

219X. Q. It is stated in Paragraph 28 of your answer that when you purchased stock of the Des Moines Union Railway Co. from said Purchasing Committee you did so "in reliance on the fact that the Des Moines Union Railway Co. was the owner of the property in controversy." Now, in speaking of "Property in controversy," do you refer to the terminal property in the City of Des Moines?

A. I bought four miles of main line—terminal property in Des Moines.

220X. Q. When you say that you "purchased stock of the Des Moines Union Railway Co. from the Purchasing Committee in reliance on the fact that the Des Moines Union Railway Co. was the owner of the property in controversy,"

231 do you refer to the one-fourth of the stock of that company that you say, in paragraph 17 of your answer, you purchased or agreed to purchase from said Committee for yourself and Gen. Dodge on or about February 5th, 1890?

A. I did refer to it.

221X. Q. Now, you have spoken about your reliance on the ownership of this terminal property, and I will ask you whom did you consider to be the owner of this Terminal property prior to the 8th day of April, 1890?

A. The Des Moines Union Railway Co.

222X. Q. Did you at any time when you purchased stock regard the alleged amendments of the articles as having had any effect upon the title or estate of the Terminal Company in the terminals?

A. I did not know what effect the amendments had upon the title to the property, I relied upon the advice and recommendation of A. B. Cummins and Col. Blodgett.

223X. Q. Now, in saying you relied upon the advice of A. B. Cummins and Col. Blodgett, do you mean to be understood as saying that you had any personal interviews with Col. Blodgett or that you conferred with him respecting the amendments prior to their adoption?

A. No, I don't remember of conferring with Col. Blodgett. The question of amending the articles was referred by the stockholders to Col. Blodgett and A. B. Cummins, and when the recommendations came in I supposed they were all right.

224X. Q. Did you ever see any letter or opinion written by Col. Blodgett in which he recommended the adoption of the articles? A. I did not.

225X. Q. As I understand the statement in your answer you first bought for yourself, or for yourself and Gen. Dodge one-fourth of the capital stock of the Des Moines Union Railway Co. from said Wabash Purchasing Committee on or about February 5th, 1890, is that correct?

A. It is.

226X. Q. And I understand from your statement in Paragraph 17 of your answer that afterwards on or about the 5th day of June, 1890, you purchased additional bonds and an additional one eighth of the stock of the Des Moines Union Railway Co. from said committee? A. Yes, I did.

227X. Q. This is correct, is it?

A. I bought it June 5th, 1890.

228X. Q. Were you not negotiating with the Wabash Purchasing Committee for the purchase of this last mentioned one-eighth of the capital stock of the Des Moines Union Railway Co. before the date on which you say in your answer the articles of incorporation of that company were amended?

A. I don't remember.

229X. Q. I will read this letter which you have identified, dated Des Moines Iowa April 1st, 1890, addressed to O. D. Ashley, New York, and signed by you, which is as follows:

"Des Moines Iowa, April 1st, 1890. O. D. Ashley, President, New York, N. Y. Dear Sir: In our last interview at your office it was understood that you would talk with Mr. Joy and Mr. Wells of the Purchasing Committee and write me upon what terms you would sell a one-eighth interest of the capital stock of the Des Moines Union Railway Co. Thinking that this matter might have escaped your memory I beg to say that I would like to hear from you in regard to it. Yours truly, F. M. Hubbell".

That is dated April 1st, 1890, were you not negotiating with the Wabash Purchasing Committee for the purchase of this last mentioned one eighth of the capital stock of the
233 Des Moines Union Railway Company, before the date on which you say in your answer that the articles of incorporation of that company were amended?

A. I wrote the letter you have just read dated April 1st, and it speaks for itself.

230X. Q. When you state in paragraph 28 of your answer that you purchased and that the firm of F. M. Hubbell & Son also purchased stock in the Des Moines Union Railway Co. "In reliance upon the fact that the Des Moines Union Railway Co. was the owner of the terminal property in controversy," do you mean that you relied on any particular deed or any particular act as having vested the title to the terminal property in the Terminal Co.?

A. I don't think I relied upon any particular deed or act, but upon all the acts of the Des Moines Union Railway Co. and the parties managing the same.

231X. Q. Did you know about the deeds from How and Dodge and others to the Terminal Co.? A. Yes.

232X. Q. And did you rely upon those deeds as having vested the fee simple title to the terminal property in the Terminal Co.?

A. I understand that all the deeds are straight warranty deeds, and the Des Moines Union Railway Co. bought all of this property and paid for it in its bonds and stock.

233X. Q. And it was those deeds and those previous transactions of the parties on which you relied as having vested the fee simple title to the terminal property in the Terminal Company?

A. I relied upon the deeds of Dodge, How, the Des Moines & St. Louis et al, to the Des Moines Union Railway Co., and the fact that the Des Moines Union paid for the property to the parties, and the fact that the three railway com-
234 panies leased from the Des Moines Union Railway Company the property for 30 years and were paying rent and attorning to their landlord.

234X. Q. And those ~~are~~ the matters on which you relied when you purchased the stock from the Purchasing Committee?

A. I may have had other things to rely on, but I do not think of anything now more than what I have stated.

235X. Q. Did any member of the Wabash Purchasing Committee or anyone representing or acting for them, ever represent to you that by or through the deed executed to the Des Moines Union Railway Co. in or about the year 1887, by How and Dodge or by the Des Moines & St. Louis Railway Co. or others, the Des Moines & Union Railway Co. had become

the beneficial owner of the entire estate in the terminal property in controversy?

A. I don't remember of talking with any member of the Purchasing Committee except Mr. Ashley and we did not discuss the title to the terminal property, we simply agreed upon the price that we would pay for the bonds and stock of the Des Moines Union Railway Co.

236X. Q. I will ask you whether any member of the Wabash Purchasing Committee or anyone representing or acting for them, ever represented or stated to you before you bought from them any stock in the Des Moines Union Railway Co. that the Des Moines Union Railway Co. had in any manner become the owner of the Terminal property in controversy?

A. I don't think this subject was discussed.

237X. Q. Did you before the year 1890 know about or had you ever seen or read the deed to said Terminal property that had been executed by How, Dodge and the Des Moines 234½ & St. Louis Railroad Co. to the Des Moines Union Railway Co.? A. I think I had read them.

238X. Q. State whether you, as secretary of the Des Moines & St. Louis Railroad Co. in or about the year 1887, joined in the execution of a deed wherein the Des Moines & St. Louis Railroad Co., conveyed all its railroad and property in the City of Des Moines to the Des Moines Union Railway Co.?

A. I signed the deed of the Des Moines & St. Louis Railroad Co. to the Des Moines Union Railway Co., Plaintiffs' Exhibit 22, dated February 21st, 1888.

239X. Q. Does the Des Moines & St. Louis Railroad Co. now operate any railroad in the City of Des Moines between Farnham Street in the City of Des Moines and the east line of the city? A. It does not.

240X. Q. What company now operates that part of the railroad that extended from Farnham Street to the old eastern limits of the city?

A. The Des Moines Union Railway Co.

241X. Q. Does the railroad just referred to and constituting a part of the property described in the deed from the Des Moines & St. Louis Railroad Co. to the Des Moines Union Railroad Co. now constitute a part of the railroad property operated by the Des Moines Union Railway Co.?

Defendants' counsel objects to the question in so far as it attempts to construe the deed, Plaintiffs' Exhibit 22.

A. The Des Moines Railway Co. has operated the railroad and managed the property inquired about for the last 23 years.

244X. Q. You state in paragraph 17 of your answer, "that on or about the fifth day of February, 1890, the respondent Frederick M. Hubbell acting in behalf of himself and
235 Grenville M. Dodge agreed to purchase from said Purchasing Committee 135 bonds of the Des Moines Union Railway Co., and one-fourth of the capital stock,"; now I will ask you whether any member of said Purchasing Committee or either of the complainants, or any of their predecessors in title, ever at any time prior to the date of your said agreement with said Purchasing Committee, made any representations to you respecting the value of the stock of the Des Moines Union Railway Co. or respecting the title held by the Des Moines Union Railway Co. in the terminal property, and if they did, will you please state when, where and by whom such representations were made?

A. I don't remember of the Purchasing Committee making any representations as to the title which the Des Moines Union Railway Co. has to the Terminal property in the City of Des Moines.

345X. Q. In paragraph 17 of your answer in this case it is stated "that thereafter on or about the 5th day of June, 1890, the respondent Frederick M. Hubbell purchased additional bonds and an additional one-eighth of the capital stock of the Des Moines Union Railway Co. from said Purchasing Committee;" now, I will ask you whether any member of the Purchasing Committee, or either of the complainants or any of their predecessors in title ever at any time prior to your purchase last aforesaid made any representations to you respecting the value of the stock of the Des Moines Union Railway Co., or respecting the title held by the Des Moines Union Railway Co. in said terminal property?

A. I don't remember that the subject was discussed or talked about at all, by any member of the Purchasing
236 Committee. They simply sold the bonds and the stock by a written contract and I paid the price agreed upon.

246X. Q. In Paragraph 16 of your answer in this case it is stated as follows: "These respondents aver that the firm of F. M. Hubbell & Son never acquired the majority of the capital stock of the Des Moines Union Railway Co. until about the 29th day of January, 1894, and that the said stock was acquired at that time by them for a valuable consideration from the Des Moines Northern & Western Railway Co." Now, I will ask you whether any member of the Purchasing Committee or either of the complainants or any of their predecessors in title ever at any time prior to said purchase by F. M. Hubbell & Son made any representations to you respecting the value of the stock of the Des Moines Union Railway Co. or respecting the title held by the Des Moines Union Railway Co. in said terminal property?

A. The Purchasing Committee made no representations to me concerning the title to the property. I never heard the title of the Des Moines Union Railway Co. to the terminal property questioned until this suit was brought and I was made one of the defendants.

247X. Q. Mr. Hubbell when you sold one-fourth of the stock of the Des Moines Union Railway Co. that you acquired from the Wabash Purchasing Committee to the Des Moines, Northern & Western Railway Co. were both you and your son, F. C. Hubbell, officers of the Des Moines Northern & Western Railway Co.? A. We were.

248X. Q. When the firm of F. M. Hubbell & Son purchased five eighths of the stock of the Des Moines & Union Railway Co. from the Des Moines Northern & Western
237 Railway Co. were you and your son, F. C. Hubbell, officers of the Des Moines, Northern & Western Railway Co.? A. We were.

249X. Q. After you had on or about January 21st, 1892, sold two-eighths of the stock of the Des Moines Union Railway Co. to the Des Moines, Northern & Western Railway Co. as stated in paragraph 17 of your answer in this case, did you then have any of that stock left to you as an owner?

A. No, only that one share of stock was retained in my name to qualify me as a director.

250X. Q. In paragraph 28 of your answer in this case you state, "that the said F. M. Hubbell & Son purchased the stock of the Des Moines Union Railway Co. now owned by them and that said Frederick M. Hubbell purchased the stock of said company from said Purchasing Committee in reliance on the fact (among other things) that the predecessors of the complainants, for a valuable consideration sold and transferred the property in question to the Des Moines Union Railway Co.;" now, to what deeds or instruments do you refer as having transferred the title held by the predecessors of the complainants in this terminal property to the Des Moines Union Railway Co.?

A. The predecessor in this case was the Wabash, St. Louis & Pacific Railway Co. They paid for the property and caused it to be transferred to the Des Moines Union Railway Co. and took the purchase price.

251X. Q. When you say that the Wabash, St. Louis & Pacific Railway Co. caused the property to be conveyed to the Des Moines Union Railway Co. do you refer to the deeds that were made by How, Dodge, and the Des Moines & St. Louis Railroad Co.?

A. I refer to all of the deeds that were made to convey the terminal property for which the Wabash, St. Louis
238 & Pacific Railway Co. had furnished the money to purchase.

252X. Q. It is also stated in this Paragraph 28 of your answer that said firm of F. M. Hubbell & Son purchased the stock of said company from said Purchasing Committee in reliance upon the fact that the complainants and their predecessors had recognized and treated the Des Moines Union Railway Co. as the owner of said terminal property; now, will you please state what facts or what acts of the complainants or their predecessors you relied upon as recognizing the Des Moines Union Railway Co. as the owner of the terminal property?

A. From the fact that the Wabash, St. Louis & Pacific Railway Co. originally caused the Des Moines Union Railway Co. to be organized, and caused the real estate to be sold to the Des Moines Union Railway Co. and took the consideration that was paid by the Des Moines Union Railway Co., and then took a lease from that company for 30 years, dated May 10th, 1889, and the fact that the Des Moines Union Railway Co. from the 1st of May, 1888, managed, operated, controlled, improved and added to the property out of its own funds ever since May 1st, 1888.

253X. Q. When you say the Terminal Company has added to the property by the expenditure of its own funds do you mean that they had acquired this additional property with funds that are commonly known in this litigation and in the affairs of this company as surplus earnings?

A. Part of the additional property was acquired by using a portion of the surplus earnings and a part of it was paid for by the sale of the Des Moines Union Railway Co. bonds.

239 254X. Q. You also state in this paragraph 28 of your answer that the firm of F. M. Hubbell & Son purchased the stock now owned by them in reliance on the fact that complainants and their predecessors have recognized and treated the Des Moines Union Railway Co. as the owner of said Terminal property; now, will you please state what facts or what acts of the complainants, or their predecessors, the firm of F. M. Hubbell & Son relied upon as recognizing the Des Moines Union Railway Co. as the owner of the Terminal property when your firm purchased the stock now owned by them from the Des Moines Northern & Western Railway Co.?

A. The stock now owned by F. M. Hubbell & Son was purchased January 25th, 1894, the Des Moines Union Railway Co. obtained the title to this property about March 31st, 1888, entered into possession of it May 1st, 1888, and the complainants and their predecessors had used the property from that time on as tenants, had paid the rent agreed upon and operating expenses, that is paid the bills that represented the rent,

and operating expenses and taxes for about 6 years when we made our purchase..

255X. Q. It is also stated in this Paragraph 28 of your answer, "That said Frederick M. Hubbell purchased stock in Des Moines Union Railway Co, in reliance upon the provisions of the articles of incorporation of said company as amended"; now, I will ask you what stock you bought from the Wabash Purchasing Committee in reliance upon the provisions of the articles of incorporation of the Des Moines Union Railway Co, as amended?

A. I bought from the Purchasing Committee one-eighth of the stock June 5th, 1890; that was about two months after the amendment of the articles?

240 256X. Q. Now, in saying that you purchased stock in the Des Moines Union Railway Co, in reliance upon the provisions of the articles of incorporation as amended do you mean that you considered the stock as having greater value after the alleged amendments than it had before?

A. I don't know whether that situation had any effect upon my purchase or not. I thought the purchase was a good one, and the Wabash wanted to sell and we traded.

257X. Q. Had you bought any stock in the Des Moines Union Railway Co, from any one when on January 23rd, 1890, Mr. Cummins first proposed that the articles of incorporation of that company should be amended.

Defendants' counsel object to the question because the record shows that the suggestion made on January 3rd, 1890, was made by Mr. How, not by Mr. Cummins.

A. My first purchase of Des Moines Union Railway stock was on February 5th, 1890, and the second was on June 5th, 1890.

258X. Q. Did the Purchasing Committee, or any one representing or acting for them, represent to you at any time before you purchased stock in the Des Moines Union Railway Co, from said committee that the provisions of the articles of incorporation of said company as amended gave any additional value to the stock of the Des Moines Union Railway Co, above what it possessed before said articles were amended?

A. They did not.

259X. Q. It is also stated in Paragraph 28 of your answer in this case that, "Frederick M. Hubbell purchased stock of the Des Moines Union Railway Co, from said Purchasing Committee in reliance upon the fact that the said contract 'Exhibit A' (being the contract of Jan. 2, 1882,) was rescinded and annulled;" now, I will ask you what stock you purchased from the Wabash Purchasing Committee

in reliance upon the fact that said contract of January 2nd, 1882, has been rescinded and annulled?

A. The stock that I bought June 5th, 1890, was purchased after these articles were amended and I relied as to its value upon the fact that the complainants and their predecessors had entered into a contract of lease and agreed to pay rent, and, also, relied upon the amendments to the articles.

260X. Q. Did you then regard those amendments as having any effect at all upon the value of the stock or upon the title held by the Terminal Co. in the terminal property?

A. No, I don't think I attached any particular importance to that.

261X. Q. Now, in regard to the contract of January 2nd, 1882, I will ask you if the Wabash Purchasing Committee, or any one acting for it, ever represented or stated to you that said contract of January 2nd, 1882, had been rescinded and annulled by the parties to that agreement?

A. As the officials of the Wabash participated in the meeting of April 8th, 1890, and changed the articles—I don't know that it was discussed after that time.

262X. Q. Did they ever represent to you that this contract had been rescinded or annulled?

A. It never was mentioned to me except as the meeting was held April 8th, 1890, and the amended articles read and approved by all the persons present and represented.

263X. Q. It is stated in Paragraph 28 of your answer, "That said F. M. Hubbell & Son purchased stock of the 242 Des Moines Union Railway Co. now owned by them in reliance upon the provisions of the articles of incorporation of said company as amended"; now, I will ask you whether the party from whom the firm of F. M. Hubbell & Son purchased the stock now owned by them ever represented to you or to any member of the firm of F. M. Hubbell & Son that the provisions of the articles of incorporation of said company as amended increased the value of the stock of the Terminal Co. or that the estate or title of the Des Moines Union Railway Co. in said terminals had been improved, increased or in any manner affected by reason of any amendment of said articles?

A. I did not understand that the amendment of the articles increased the value of the stock. I understood the articles were amended in order to have the operations of the company conform to the way the company was being managed at that time.

264X. Q. By managed at that time you refer to it as being managed under the contract of May 10th, 1889?

Defendants' counsel objects to the question as assuming the company was managed under some contract.

A. It was managed under the articles of incorporation of the Des Moines Union Railway Co. and the Des Moines Union Railway Co. had leased to the complainants and their predecessor its property.

265X. Q. It is also stated in Paragraph 28 of your answer in this case, "That said F. M. Hubbell & Son purchased the stock of the Des Moines Union Railway Co. now owned by them in reliance upon the fact that said contract, Exhibit A (being the contract of January 2nd), had been re-

243 rescinded and annulled"; now, I will ask you whether the party from whom F. M. Hubbell & Son purchased the stock now owned by them, represented to you or to any member of the firm of F. M. Hubbell & Son, that said contract of January 2nd, 1882, had been rescinded and annulled by the parties to that agreement, and that by reason of such annulment the estate or title of the Des Moines Union Railway Co. in said terminals had been in any manner increased, improved or affected.

A. I relied upon the fact that the contract of January 2nd, 1882, had been rescinded and annulled and upon the fact that the complainants and their predecessors had recognized and treated the Des Moines Union Railway Co. as the owner of said Terminal property.

266X. Q. And no officer or representative of the Des Moines Northern & Western Railway Co. had represented to you at the time you made that purchase that the contract of January 2nd, 1882 had been rescinded or annulled?

A. That was not discussed. I knew of my own knowledge that the amended articles had been adopted April 8th, 1890, and recognized and treated from that time on as the articles of incorporation.

267X. Q. And you knew of that action taken April 8th, 1890 that purported to repeal and annul the contract of January 2nd, 1882, before you bought the stock that you now own?

A. I knew about the amendment to the articles at the time they were amended.

268X. Q. And you did not purchase the stock you now own relying on any representation that was made to you at or about the time you bought the stock by any officer of the Des Moines Northern & Western Railway Co.?

244 A. I was the main officer of Des Moines Northern & Western; I do not know what representations I made to myself, now.

269X. Q. It is also stated in paragraph 28 of your answer "that the firm of F. M. Hubbell & Son purchased stock

of the Des Moines Union Railway Co. now owned by them from the Wabash Purchasing Committee in reliance upon the provisions of the articles of incorporation of said company as amended;" now, will you please state whether you had not purchased one eighth of said stock for yourself and one eighth thereof for G. M. Dodge before April 8th, 1890, which is the date on which said articles are alleged to have been amended? A. Yes.

270X. Q. It is also stated in the paragraph 28 of your answer "that the firm of F. M. Hubbell & Son purchased the stock now owned by them in reliance on the fact that the complainants and their predecessors had recognized and treated the Des Moines Union Railway Co. as the owner of said Terminal property." Now, will you please state what facts, or what acts of the complainants or their predecessors, the firm of F. M. Hubbell & Son relied upon as recognizing the Des Moines Union Railway Co. as the owner of the terminal property when they purchased the stock now held by them?

A. The fact that the Wabash, St. Louis & Pacific Railway Co., being one of the predecessor companies, conveyed and sold the terminal property to the Des Moines Union Railway Co. and assisted in organizing that company, and the fact that company paid the Wabash, St. Louis & Pacific Railway Co. the purchase price, and later on took a lease for 30 years from the Des Moines Union Railway Co. and paid its rents according to the terms of the lease, punctually, and

245 that at no time indicated, or represented, or claimed that the Des Moines Union Railway Co. was not the owner of its property which the Wabash, St. Louis & Pacific Railway Co. had sold to it.

271X. Q. When you speak of having taken a lease from the Des Moines Union, do you refer to a certain instrument dated May 10th, 1889? A. I do.

272X. Q. In paragraph 15 of your answer in this case it is stated as follows:

"These respondents further respectfully show to the Court that on or about the 10th day of May, 1889, the St. Louis Company, the Northern Company and the Northwestern Company entered into a formal written agreement of lease with the Des Moines Union Railway Co., of which Exhibit P, to the amended bill is a copy; and that the said agreement was confirmed and ratified by the successors to the original parties thereto as binding upon such successors by the agreement of which Exhibit R, attached to said bill is a copy and that ever since the making of said contract of May 10th, 1889, (Exhibit P. to the amended bill), the occupation of the terminal property by the complainants and their predecessors in interest has been under and by virtue of said contracts;

that said contracts have been accepted by all parties in interest as defining and fixing such rights as the complainants had with reference to the use and occupation of said property."

Now I will ask you whether it is a fact that these terminal properties in controversy have been operated by the parties to said contract, in accordance with the terms of said two agreements since on or about the 10th day of May, 1889.

Defendants' counsel objects to the question as incompetent, because it assumes that the contract provides for the manner of operating the terminal property which is not provided for in the terminal contracts, the terminal property being operated by the Des Moines Union Railway Co. under its articles of incorporation by its Board of Directors.

A. The terminal property has been operated since May 1st, 1888 under its articles of incorporation, and the occupation of the property by the complainants and their predecessors has been by virtue of the contract of May 10th, 1889 and July 31st, 1897.

273X. Q. Have monthly bills been rendered by the Terminal Company against the railroad companies since May 10th, 1889, in accordance with those contracts?

A. I understand they have.

274X. Q. Have these bills been paid by the complainants and their predecessors in interest? A. Mostly.

275X. Q. Has there been since May 10, 1889, to your knowledge, any other contract, agreement or writing, that has controlled or affected the operation or use of said terminal properties by the complainants and their predecessors, excepting the agreements designated in your answer as Exhibits P. and R.

Defendants' counsel objects to the question in so far as it assumes an agreement for the control and operation of the property, for the reasons urged against the preceding question.

247 A. The Des Moines Union Railway Co. has maintained and operated its property from May 1st, 1888 to the present time and has leased to the complainants or their predecessors its property by leases designated as Exhibits P. and R. and have paid the bills rendered against them with the credits to which they were entitled for money paid by the other tenants which under the contract was to be credited to the complainants, and these contracts Exhibits P and R, are the only contracts during that period which the Des Moines

Union Railway Co. has had with the complainants or their predecessors as to the occupation and use of this property.

276X. Q. Is it your understanding that the contract of May 10th, 1889 is still in force and that these terminal properties are now being used and operated under that agreement.

Defendants' counsel objects to the assumption as to operation for the reason urged against the same assumption previously.

A. I understand that the terminal property is now being used and operated under the contracts of May 10th, 1889, and July 31st, 1897.

277X. Q. It is stated in Paragraph 15 of your answer "that the occupation of the terminal property by the complainants and their predecessors in interest has been under and by virtue of said contract of May 10th, 1889"; I will ask you to state whether you now regard that statement in your answer as being true, and if you say it is not true, then will you please state wherein it is not true?

A. I understand that that paragraph in the answer is true.

278X. Q. You have spoken of the contract of May 10th, 1889, as a lease, have you not? A. Yes.

279X. Q. Now who has occupied or in other words who has been in possession of the terminals since May 10th, 1889?

A. The Des Moines Union Railway Co.

280X. Q. Is it your idea of a lease that the lessor remains in possession of the property?

Defendants' counsel objects to the question as argumentative and calling for a conclusion of law.

A. I do not want to construe the lease of May 10th, 1889, but I understand that under that contract the tenant companies were to run their trains into Des Moines, and that the Des Moines Union Railway Co. would break up their trains, attend to their freight and passenger business, maintain and operate the road and that the complainants have nothing to do with the operating of the road except to run their trains in and out.

281X. Q. You have spoken about the payment of rental by the complainants and their predecessors to the Des Moines Union Railway Co.; have they made any payments to the Des Moines Union Railway Co. other than those provided for in the contract of 1889? A. Not that I know of.

282X. Q. What changes, if any, took place in the management of the terminal property as a result of the alleged changes that were made in the articles of incorporation of the Des Moines Union Railway Co.?

A. I do not know of any change in the maintenance, operation or management of the property by reason of the amendment to the articles.

283X. Q. Then as I understand you, work has been performed in the same way and bills have been rendered
249 and paid in the manner since April 8th, 1890, as before that date? A. Yes.

284X. Q. Did you regard the amendments of the articles of incorporation as having any effect upon the right of the Terminal Company to what is called its surplus earnings?

A. I did not.

285X. Q. Can you mention any act or transaction that has ever been performed by the parties to the contract of May 10th, 1889 that was performed under or governed by the alleged amended articles of incorporation of the Des Moines Union Railway Co.?

A. I think the Des Moines Union Railway Co. has been operated exactly in the same manner since April 8th, 1890, as it was before that time.

286X. Q. Mr. Hubbell, it is stated in Paragraph 15 of the answer in this case that, "Complainants have expressly and affirmatively recognized the Des Moines Union Railway Co. as the owner of the terminal property now in controversy and recognized and attorned to the said company as their landlord, and assumed the position of tenants under their said contract and leases for said property."; now, when you state that the complainants have recognized and attorned to the Des Moines Union Railway Co. as their landlord, and assumed the position of tenants under said contract of May 10th, 1889, do you mean that the complainants have paid a rental to the Terminal Company for their use and occupation of the Terminal properties? A. I do.

287X. Q. In referring to the contract of May 10th, 1889, in Paragraph 15 of your answer in this case, it is stated "That by said agreement the complainants expressly and affirmatively recognized the Des Moines Union Railway Co. as the owner of the terminal property, now in contro-
250 versy, and recognized and attorned to said Terminal Company as their landlord." Now will you please state what clause or provision of the contract of May 10th, 1889, the complainants or their predecessors, have either recognized the Terminal Company as their landlord or by what acts they have attorned to the Terminal Company as their landlord?

A. I will refer to the contract as a whole and what was done under it, including the fact that payments have been made under it.

288X. Q. Mr. Hubbell in the record book of the Des Moines Union Railway Co. there appears what purports to be a rec

ord of the proceedings of a meeting of the stockholders of the Des Moines Union Railway Co. held at Des Moines, Iowa, on the 8th day of April, 1890. That record book purports to have been signed by you as secretary of the company?

A. Yes.

289X. Q. And it reads in part as follows:

"The stockholders of the Des Moines Union Railway Co. met in an adjourned meeting pursuant to adjournment at 10 o'clock A. M., at the office of the company, on Tuesday, the 8th day of April, 1890.

"There were present in person

J. F. How, representing one share.

C. M. Hays, representing one share.

F. M. Hubbell, representing one share.

L. M. Martin, representing one share.

F. C. Hubbell, representing one share.

A. B. Cummins, representing one share.

I will ask you, as secretary of the company, whether on or prior to April 8th, 1890, Mr. J. F. How had to your
251 knowledge subscribed for any share or shares of stock of the Des Moines Union Railway Co. or whether any share or shares of stock of that company had been issued to him?

A. There were no shares of stock issued until the date of this meeting.

290X. Q. Had Mr. How to your knowledge ever subscribed for any share or shares of stock in the Des Moines Union Railway Co. prior to that date?

A. I do not know.

291X. Q. I will ask you, as secretary of the company, whether at the time that meeting was held Mr. C. M. Hayes had to your knowledge subscribed for any share or shares of stock of the Des Moines Union Railway Co. or whether any share or shares of stock of that company had been issued to him?

A. I do not know who had subscribed for stock; no stock had been issued until that date.

292X. Q. I will ask you as secretary of the company, whether at the time that meeting was held, you yourself had subscribed for any share or shares of stock of the Des Moines Union Railway Co., or whether any share or shares of the stock of that company had been issued to you?

A. None of the stock had been issued to me until on that date, and it was understood that we were all entitled to one share in order to represent the property.

293X. Q. But no stock had been issued until after this meeting?

A. No, I think it was this meeting that authorized the stock to be issued.

294X. Q. I will also ask you, as secretary of that company whether at the time that meeting was held Mr. L. M. Martin had, to your knowledge, subscribed for any share or shares of stock of the Des Moines Union Railway Co., or
252 whether any share or shares of stock of that company had then been issued to him?

A. No stock had been issued to him at that time. It was understood that he should represent one share and that he should own one share in the company.

295X. Q. As to whether he had ever subscribed to any, you do not know? A. No, I do not know.

296X. Q. I will ask you, as secretary of the company, whether at the time the meeting was held Mr. F. C. Hubbell had, to your knowledge, subscribed for any share or shares of stock, of the Des Moines Union Railway Co., or whether any share or shares of the stock of that company had then been issued to him?

A. I think that F. C. Hubbell was in the same position as the rest of them.

297X. Q. Was the same true in respect to Mr. Cummins?

A. Yes, as far as I know.

298X. Q. In this record it is also stated as follows:

"There were present by proxy:

G. M. Dodge by L. M. Martin representing one share

W. H. Blodgett by J. F. How, representing one share;"

I will ask you, as secretary of the company, whether at the time that meeting was held either G. M. Dodge or W. H. Blodgett had subscribed for any share or shares of stock of the Des Moines Union Railway Co., or whether any share or shares of stock of that company had then been issued to them?

A. No stock had been issued to any of those parties until after the authority was granted by the meeting of April 8th, 1890.

299X. Q. In this record it is also stated in part as follows: "There were also present the Des Moines & North-

253 western Railway Co., successor to the Des Moines Northwestern Railway Co., by F. M. Hubbell, president"; I

will ask you, as secretary of the Des Moines Union Railway Co., whether at the time that meeting was held, the Des Moines & Northwestern Railway Co. had to your knowledge subscribed for any share or shares of stock in the Des

Moines Union Railway Co. or whether any share or shares of stock had then been issued to that company?

A. That company at that time was the owner of one quarter of the stock in the company, but the shares had not been issued.

300X. Q. When you say that the Des Moines Northwestern Railway Co. was the owner of one-fourth, do you refer to the provision in the contract of May 10th, 1889 providing for the distribution of the stock among the three companies?

A. I had reference to the fact that when I purchased the Des Moines & Northwestern Railroad, I purchased a quarter interest in the Terminal property, and hence the Des Moines & Northwestern was the owner of one fourth of the stock by reason of that purchase of October, 1886.

301X. Q. You refer in your answer to the contract between Polk & Hubbell and the Purchasing Committee that is attached to your answer as an exhibit?

A. Yes, it was under that purchase of October, 1886, that the Des Moines & Northwestern became the owner of one quarter of the capital stock, less one or two shares represented by individuals.

302X. Q. In this record it is also stated that the Des Moines & Northern Railway Co., successor to the St. Louis, Des Moines & Northern Railway Co. was present by A. B. Cummins, vice-president: I will ask you, as secretary of the Des Moines Union Railway Co., whether at the time that meeting was held, the Des Moines & Northern Railway Co. had to your knowledge subscribed for any share or shares of stock in the Des Moines Union Railway Co. or whether any share or shares had been issued to that company?

A. The shares had not been issued; but the Des Moines & Northern Railway Co. was the owner of one quarter of the stock of the Des Moines Union Railway Co. at that time.

303X. Q. In what way had the Des Moines & Northern Railway Co. become entitled to one quarter of that stock?

A. By assignment of transfer of G. M. Dodge.

At this point a recess was taken until 2 P. M. at which time the taking of the deposition was resumed as follows:

304X. Q. In this record meeting it is also stated (I am referring to the record of the meeting of April 8th, 1890) that the Des Moines & St. Louis Railroad Co. was present at that meeting by J. F. How, president; now, I will ask you, as secretary of the Des Moines Union Railway Co., whether at the time that meeting was held the Des Moines & St. Louis Railway Co. had to your knowledge, subscribed for any share or shares of stock in the Des Moines Union Railway Co. or

whether any share or shares had then been issued to that company?

A. There had been no stock issued to the Des Moines & St. Louis at that time.

305X. Q. Had that company, to your knowledge, subscribed for any stock in the Des Moines Union Railway Co. at that time?

A. My understanding is that that company was entitled to half of the stock when issued.

306X. Q. But had that company ever subscribed for any stock to your knowledge?

A. I think the resolution of November 8th, 1887, was a subscription to the stock.

255 307X. Q. In this record it is also stated as follows: "J. F. How, president, presiding.

"Whereupon by examination of the records and books of the company it was determined that all the stockholders of said company were present, either in person or by proxy, duly filed with the secretary of the company;" now I will ask you to state what records and books of the Terminal Company were examined at that meeting in order to ascertain whether all of the stockholders of the company were present, either in person or by proxy?

A. The minute book or the record of the proceedings of the company was examined, that was our information of who was entitled to stock.

308X. Q. Was the minute book of the proceedings of the Des Moines Union the only book that was examined at that meeting? A. I do not know of any other book.

309X. Q. In this record it is also stated: "That all the stockholders of said company were present, either in person or by proxy duly filed with the secretary of the company;" I will ask you, as secretary of the Des Moines Union Railway Co., whether you now have in your possession a written proxy signed before the 8th day of April, 1890, by G. M. Dodge, as a stockholder in the Des Moines Union Railway Co., by which he authorized L. M. Martin to attend that meeting and vote any share or shares of stock then owned by him, Dodge, either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Co.

A. I do not know whether I have such written proxy in my possession or not. Examination discloses none.

310X. Q. Do you recollect to have ever seen such a paper?

256 A. Whenever the record says that a proxy was filed it certainly was filed. I have hundreds of them in different companies.

311X. Q. Have you all of the records and papers of the Des Moines Union Railway Co. in your possession?

A. Most of these are here.

312X. Q. Do you mean here present?

A. Here in the building.

313X. Q. In this office?

A. In this office or in the vault.

314X. Q. Will you examine or have an examination made to see whether you have the proxy from Gen. Dodge authorizing Mr. Martin to attend that meeting that was held on the 8th day of April, 1890, and vote either for or against the proposed amendment?

A. I will make an examination. In the different companies it was very common for proxies to be filed, and as a rule they were put in a pigeon hole in our vault, and if they have not been destroyed many of them can be found now. Examination discloses none.

315X. Q. I will ask you whether, as secretary of the Des Moines Union Railway Co., you now have in your possession, a written proxy signed before the 8th day of April, 1890, by W. H. Blodgett, as a stockholder in the Des Moines Union Railway Co., by which he authorized J. F. How to attend any meeting and vote any share or shares of stock then owned by him either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Co.?

A. This meeting occurred 21 years ago, and I do not know whether the proxies can be found, but I am certain that such proxies were in existence and submitted to the meeting. Examination discloses none.

316X. Q. I will ask you whether, as secretary of the Des Moines Union Railway Co., you now have in your possession a certified copy or other copy of any resolution adopted at any meeting of the stockholders or directors of the Des Moines & Northwestern Railway Co. prior to the 8th of April, 1890, authorizing you to be present at any meeting of the stockholders of the Des Moines Union Railway Co. and vote any share or shares of stock in that company that were then owned or held by said Des Moines & Northwestern Railway Co., either for or against any proposed amendments of the articles of incorporation of the Des Moines & Union Railway Co.?

A. I do not know whether I have or not.

317X. Q. Will you make an examination and see whether you can find any among the papers and records?

A. Yes, I will look in the place where we keep the proxies and see if any of them have been saved or not.

318X. Q. I will ask you whether, as secretary of the Des Moines Union Railway Co., you now have in your possession, a certified copy or any other copy of a resolution adopted at any meeting of the stockholders or directors of the Des Moines

& Northern Railway Co. prior to the 8th day of April, 1890, authorizing Mr. A. B. Cummins to be present at any meeting of the stockholders of the Des Moines Union Railway Co. and vote any share or shares of stock in that company then owned or held by said Des Moines & Northern Railway Co. either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Co.?

A. I do not know whether I have or not.

319X. Q. Will you look and see whether you can find such a resolution or copy of such resolution and produce it later if you can find it? A. Yes, I will look.

258 320X. Q. I will ask you whether as secretary of the Des Moines Union Railway Co., you now have in your possession a certified copy or other copy of any resolution adopted by any meeting of the stockholders or directors of the Des Moines & St. Louis Railroad Co. prior to the 8th day of April, 1890, authorizing J. F. How to be present at any meeting of the stockholders of the Des Moines Union Railway Co. and vote any share or shares of stock in that company, either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Co.?

A. I do not know whether I have or not, I will look for them.

321X. Q. As secretary of said Terminal Company have you now in your possession any proxy executed by J. F. How, C. M. Hays, W. H. Blodgett, or either of them, prior to April 8th, 1890, authorizing A. B. Cummins to be present at any meeting of the stockholders of the Des Moines Union Railway Co. and vote any share or shares of stock then owned or held by either of them in said company, either for or against any proposed amendment of the articles of incorporation of said company? A. I do not know whether I have or not.

322X. Q. Will you look and see whether you have, and if so, will you produce them?

A. Yes sir, I will look and see; you will have to send me a copy of the questions.

323X. Q. This record book states that, after the organization of the meeting, F. M. Hubbell secretary, reported to the meeting that pursuant to the articles of incorporation he had caused the following notice to be published in the Des Moines Leader, the first publication being on the 15th day of January, 1890, and the last publication being on the 18th day of January, 1890, to-wit:

259 "Des Moines Union Railway Company—notice.

"Notice is hereby given that in pursuance of an adjournment had at a regular annual meeting of the stock-

holders, held at Des Moines, January 3rd, 1890, there will be a meeting of the stockholders of the Des Moines Union Railway Company at its office in Des Moines, Iowa, on Tuesday, the 18th day of February, 1890, at eleven o'clock A. M., at which meeting there will be considered and voted upon certain amendments to the Articles of Incorporation which will then be proposed, and there will also be considered such other business as may come before the meeting. F. M. Hubbell, Secretary."

I will ask you to state whether that statement in that record book respecting the publication of that notice is correct?

A. That is what the record shows.

324X. Q. That statement, then, is correct, is it?

A. Yes.

325X. Q. This record book also states that you as secretary also reported to that meeting, "that you had pursuant to the articles of incorporation notified each stockholder of the time, place and object of this meeting, which notice contained the amendments proposed to be offered to the articles of incorporation"; now, I will ask you to state, if you will, the name of each stockholder to whom you gave a notice of that meeting, together with a copy of the amendments proposed to be offered to said articles of incorporation?

A. The notice was given to James F. How, C. M. Hays, F. M. Hubbell, L. M. Martin, F. C. Hubbell, A. B. Cumming, G. M. Dodge, W. H. Blodgett, the Des Moines & Northwestern Railway Co., The Des Moines & Northern Railway Co., and the Des Moines & St. Louis Railroad Co.

260 326X. Q. And accompanying those notices did you send copies of the proposed amendments?

A. Yes, I never made up a false record in my life, and that is right, I know.

327X. Q. Have you now any personal recollection of what transpired at that meeting? A. No.

328X. Q. Well, according to your best recollection when did you first see these proposed amendments to said articles of incorporation?

A. At or before the 18th day of February, 1890; I may have seen them as early as January 3rd, 1890.

329X. Q. Were those amendments submitted by Mr. Cummins to the meeting held on the 18th day of February, 1890?

A. Yes.

330X. Q. Can you state now whether you were familiar with those amendments before the date of that February meeting?

A. I notice that I moved at the February meeting of the stockholders that the stockholders' meeting be adjourned for the purpose of having further opportunity to examine said

amendments and I fancy that I wanted further time, perhaps other stockholders wanted further time.

331X. Q. Does that record that you have before you show who was present at the meeting held February 18th, 1890?

A. Yes.

332X. Q. Will you please read their names?

A. There were present in person, F. M. Hubbell, L. M. Martin, F. C. Hubbell, A. B. Cummins, G. M. Dodge by L. M. Martin, J. F. How by A. B. Cummins, C. M. Hays by A. B. Cummins, W. H. Blodgett by A. B. Cummins.

333X. Q. As secretary of the Des Moines Union Railway Co. have you now in your possession any proxies authorizing Mr. Cummins to be present and represent Mr. Hays or Mr. Blodgett or anyone else?

A. I do not know whether I have or not, but I am certain that Mr. Cummins would not have represented Mr. How, Mr. Hays and Mr. Blodgett unless he had authority to do so; I might add that these gentlemen have never repudiated the meeting.

Complainants' counsel move to strike out the enology on Senator Cummins, because it is not responsive to the question, and also move to strike out the part of the answer "I might add that these gentlemen have never repudiated the meeting" because it is not responsive to the question.

334X. Q. Are you a member of the Iowa bar?

A. I am an honorary member.

335X. Q. For how many years have you been a member of the Iowa bar?

A. I was admitted to the bar in Sioux City when I was about 18 years old, that would be about 34 years ago.

336X. Q. What is your present occupation?

A. Mostly buying real estate and defending this suit.

337X. Q. Are you familiar with real estate values in the city of Des Moines? A. Yes.

338X. Q. What do you consider the present value of the terminal property in controversy, its value for terminal purposes?

A. I have never figured it up, I could make an estimate on it with some time.

339X. Q. You have some impression?

A. Well, I think it is worth \$2,000,000.

340X. Q. What is the present outstanding indebtedness of the Des Moines Union Railway Co.?

A. 671 bonds, \$671,000.

341X. Q. Is that indebtedness all secured by the mortgage dated on or about November 1st, 1887? A. It is.

342X. Q. It is stated in Paragraph 14 of your answer, as follows: "These respondents deny that it was intended that the Des Moines Union Railway Company should take title to said property as trustee for the complainants; and aver that it was intended that it should, and it did in fact, take title to said property in fee absolute for its own sole use and benefit."

Now, I will ask you to state what interest you considered the Des Moines Union Railway Co. to have in this terminal property in February, 1890, when you say you purchased from the Wabash Purchasing Committee, one-eighth of the stock of the Des Moines Union Railway Co. for yourself and one-eighth thereof for Gen. Dodge?

A. A good and perfect title in fee simple.

343X. Q. That was before the amendments?

A. Yes sir, before the amendments.

344X. Q. In Paragraph 14 of your answer it is stated as follows:

"These respondents further aver that the Des Moines Union Railway Co. has at all times been recognized by the complainants as the absolute owner of the property in question, and that it (the Terminal Company) has made large expenditures in connection with said property in reliance upon its ownership thereof".

Now, do you mean to be understood as stating that the Terminal Company has made large expenditures of its own funds on this property in reliance upon its ownership thereof?

A. I do.

345X. Q. Have any moneys been expended by the Terminal Company in connection with this terminal property, excepting from what has been designated as its surplus earnings, and such as has been realized from the sale of its bonds?

A. Those are the two sources of moneys used in purchasing additional property and making additional improvements.

263 346X. Q. Had it been represented to you by anyone that the Des Moines Union Railway Co. had acquired title to this terminal property in fee for its own sole use and benefit before April 8th, 1890, the date at which the articles of incorporation of that company are alleged to have been amended?

A. That is the way I understood that the Des Moines Union Railway Co. purchased the property and took the title in fee and owned it absolutely.

Complainants' counsel move to strike out the answer as not responsive to the question, and state that the question is

whether anybody made representations to him, not what he thought about it.

347X. Q. (346X. Q repeated).

A. I never heard it disputed at that time. I do not remember of any representations being made, but I was acquainted with all the persons connected with this company and none of them ever said that the title of the Des Moines Union was not good.

348X. Q. When you wrote this letter to Mr. O. D. Aubrey, dated April 1st, 1890, which, omitting date and address reads as follows, "In our last interview at your office, it was understood that you would talk with Mr. Joy and Mr. Wells of the Purchasing Committee and write me upon what terms you would sell a one-eighth interest in the capital stock of the Des Moines Union Railway Co. Thinking that this matter might have escaped your memory I beg to say that I would like to hear from you in regard to it." Did you then consider that the Des Moines Union Railway Co. had taken title to this terminal property in fee absolute for its own sole use and benefit?

A. Yes, encumbered with the bonded debt.

264 349X. Q. Did you consider the Des Moines Union Railway Co. the absolute owner in fee, of this terminal property when the firm of F. M. Hubbell & Son bought five eighths of the capital stock of the Des Moines Union Railway Co. from the Des Moines, Northern & Western Railway Co. on or about January 29th, 1894? A. I did.

350X. Q. Were you a director of the Des Moines, Northern & Western Railway Co. at the time that company sold five eighths of the stock of the Des Moines Union Railway Co. to the firm of F. M. Hubbell & Son for \$25,000? A. I was.

351X. Q. Were you president of the Des Moines, Northern & Western Railway Co. at the date of that transaction?

A. Yes.

352X. Q. Was F. C. Hubbell a director of the Des Moines Northern & Western Railway Co. at the time of that transaction? A. Yes.

353X. Q. Was Mr. F. C. Hubbell vice president of the Des Moines, Northern & Western Railway Co. on the date of that transaction? A. Yes.

354X. Q. Was Mr. H. D. Thompson a director of the Des Moines Northern & Western Railway Co. at the time that company sold five eighths of the capital stock of the Terminal Company to the firm of F. M. Hubbell & Son? A. Yes.

355X. Q. Is Mr. H. D. Thompson a member of your family or otherwise related to you?

A. He is my brother in-law.

356X. Q. Was Mr. A. M. Denman a director of the Des Moines Northern & Western Railway Co. at the time that company sold five-eighths of the stock of the Terminal Company to F. M. Hubbell & Son? A. Yes, I think he was.

357X. Q. Was Mr. A. M. Denman then in your employ or was he a member of your family?

A. He was employed by the Des Moines Waterworks Company.

358X. Q. Was Mr. A. B. Cummins a director of the Des Moines, Northern & Western Railway Co. in 1894 at the time you say that company sold five-eighths of the stock of the Des Moines Union Railway Co. to F. M. Hubbell & Son?

A. Yes.

359X. Q. Was Mr. Cummins also general solicitor of the Des Moines Northern & Western Railway Co. in 1894?

A. He was.

360X. Q. Was Mr. Cummins also your attorney and legal adviser at the time that sale of stock was made to the firm of F. M. Hubbell & Son? A. Yes.

361X. Q. When the firm of F. M. Hubbell & Son bought this five-eighths of the stock of the Des Moines Union Railway Co. what percentage of its par value did you pay for it, ten cents on the dollar? A. Ten cents on the dollar.

362X. Q. Were you present when the testimony of Mr. A. B. Cummins was taken in this case on or about March 22d of the present year? A. Yes.

363X. Q. Is it true that you were opposed to amending the articles of incorporation of the Des Moines Union Railway Co. when first proposed to you by Mr. Cummins?

A. I only judge from the fact that Mr. Cummins wrote a letter to Gen. Dodge at about that time and said in it that I was opposed to it; I do not remember the incident myself.

364X. Q. You do not remember whether you were for or against the amendment to the articles of incorporation when Mr. Cummins is said to have proposed them at a meeting of the stockholders of the Terminal Company on January 3rd, 1890? A. No, I do not remember.

365X. Q. Do you remember what, if any, definite reason Mr. Cummins gave for changing the articles of incorporation, that caused you to change your mind and become in favor of them?

A. I do not remember why I became in favor of them only that they were recommended by Col. Blodgett and A. B. Cummins and I supposed they were right.

365X. Q. When you say they were recommended by Wells H. Blodgett and A. B. Cummins, do you mean to say more than that in a resolution passed in January, 1890, the matter was referred to those two gentlemen?

A. The matter was referred to those two gentlemen, and they had considerable correspondence and some conferences, and, as I understood, it came to an agreement and they recommended those articles.

366X. Q. Have you any personal knowledge as to any correspondence or conferences between W. H. Blodgett and A. B. Cummins between the date on which the amendments were proposed by Mr. Cummins at the January meeting of the Terminal Company and the time of their adoption?

A. I have seen letters of Mr. Cummins to Col. Blodgett as copied in Mr. Cummins' letter-book and heard him testify that he sent them, and that is all of the personal knowledge except what Mr. Cummins said himself.

Complainants' counsel move to strike out that part of the answer that does not refer to personal knowledge.

367X. Q. (366X. Q. repeated).

A. The only knowledge that I can now remember of is from reading the correspondence between A. B. Cummins and Col. Blodgett, on this subject.

368X. Q. Did you ever see any letter signed by Mr. Blodgett in which he expressed any opinion at all respecting the advisability of adopting or rejecting the amendments?

A. I do not know that I ever did.

267 369X. Q. You refer to the letter read by Mr. Cummins in his deposition? A. Yes.

370X. Q. Did Mr. Cummins explain to you that his purpose in amending the articles of incorporation of the terminal Co. was to straighten out the title to the terminal property?

A. I understood that his reason for claiming that an amendment of the articles was necessary was that the Des Moines Union Railway Co. was not carrying on business in accordance with the contract of January 2nd, 1882, and never had done so, and that it was necessary for the Des Moines Union to amend its articles so that they would conform to the methods and manner in which the Des Moines Union Co. was operating and transacting the business.

371X. Q. Had the contract of May 10th, 1889, been executed at that time prior to the date of these alleged amendments? A. Yes.

372X. Q. And prior to the date on which Mr. Cummins made this explanation to you respecting his purpose in amending them?

A. I cannot remember everything that occurred 21 years ago.

373X. Q. I will ask you this question, had the contract of May 10th, 1889, been executed before you ever heard of any suggestion from any one respecting the amendment of the articles?

A. Yes, I think the contract of 1889 was executed before I heard of any necessity or desirability of amending the articles.

374X. Q. Or changing the method of doing the business?

A. We did not change the method.

375X. Q. The method was not changed after the amendment? A. Not at all.

268 376X. Q. The business was transacted and has been transacted ever since, so far as you know, under the contract of 1889? A. Yes.

377X. Q. Did Mr. Cummins explain to you that the record respecting the title to these terminal properties was, in his opinion, in such a state that it was, or might become, a question as to whether those terminal properties were owned by the Terminal Company or by the railroad company?

A. He did not.

378X. Q. Did Mr. Cummins explain to you that he thought it would be a good thing for all parties to have the full title to those terminals clearly vested in the Terminal Company?

A. I understood from everybody connected with the Des Moines Union Co. that its title was perfectly good. It seems that the Des Moines Union Company at this time or since its organization, had not been operated, or its business transacted, in accordance with the contract of January 2nd, 1882, that in fact the contract of 1882 had been abandoned, and the business was being conducted in an entirely different way, and Mr. Cummins thought under the situation the articles should be amended to correspond with the methods under which the Des Moines Union had been operated ever since it took possession on May 1st, 1888.

379X. Q. You are very familiar with all these contracts; in what respect now, was the contract of May 10th, 1889 different from the contract of January 2nd, 1882 with respect to the management and conduct of the business of the Terminal Company?

269 Defendants' counsel objects to the question because the contracts are the best evidence and because it calls for a conclusion which can only be made by a comparison of the two contracts in detail.

A. I could not say in what respect, that is in every respect, wherein it was operated in a different manner than originally contemplated. As I remember it under the contract of 1882, each company was to do its own work, go everywhere, and under the articles of incorporation, and the contract of 1889, the Des Moines Union operated the property instead of these tenant companies. There may have been other differences which I now do not remember.

380X. Q. But the one you stated is the only one you now recall?

A. That is the only one I now recall.

381X. Q. Did Mr. Cummins advise you that the desired change respecting this management of the property was to have any effect upon the title held by the Terminal Company in the terminal property?

A. No, he did not, I know a warranty deed when I see it.

382X. Q. Did he say anything to you about straightening out the title? A. No, the title was good.

383X. Q. He never argued that with you, urged that as a reason why the amendments should be adopted? A. No.

384X. Q. He never suggested that by adopting the proposed amendments something would be added to the estate then held by the Terminal Company under its deeds from How, Dodge and others? A. No, emphatically.

385X. Q. Then the question of increasing the estate or interest of the Des Moines Union Railway Co. in these terminals was not considered by you in determining whether you would be for or against the proposed amendment?

A. No.

270 386X. Q. Were you a director of the Des Moines & Northern Railway Co. during the year 1890?

A. I think I was.

387X. Q. Were you a director of the Des Moines & Northwestern Railway Co. during the year 1890? A. Yes.

388X. Q. Were you a director of the Des Moines & St. Louis Railroad Co. during the year 1890? A. Yes.

389X. Q. Was Mr. Cummins a director of the Des Moines & Northern Railway Co. during the year 1890?

A. I know in reason that he was, although to be absolutely certain I would have to consult the record. Mr. Cummins was one of the directors named in the articles when the company was organized in the fall of 1889, and his office no doubt was continued in the year 1890.

390X. Q. Was Mr. Cummins a director of the Des Moines & St. Louis Railroad Co. during the year 1890? A. Yes.

391X. Q. Was Mr. F. C. Hubbell a director of the Des Moines and Northwestern Railway Co. during the year 1890?

A. Yes.

392X. Q. Was Mr. F. C. Hubbell a director of the Des Moines & St. Louis Railroad Co. during the year 1890?

A. I think not.

393X. Q. At the time those deeds were made by How, Dodge and others to the Des Moines Union Railway Co. in the year 1887, were you a director and also secretary of the Terminal Company? A. Yes.

394X. Q. Were you also at that time a director and officer of the St. Louis, Des Moines & Northern Railway Co.

A. Yes, I was a director.

395X. Q. Were you a director of the Des Moines Northwestern Railway Co. at the time How and Dodge executed their deeds to the Terminal Company in 1887?

271 A. I think the Des Moines Northwestern had passed out of existence.

396X. Q. The Des Moines Northwestern, I am speaking of 1887?

A. I was a director in the Des Moines Northwestern in 1887.

397X. Q. Were you also a director of the Des Moines & St. Louis, in 1887 when the deeds were executed by How, Dodge and others to the Des Moines Union Railway Co.?

A. Yes.

398X. Q. Attached to the bill of complaint in this case as Exhibit F. is a copy of certain proceedings had at a meeting of the stockholders of the Des Moines & Northwestern Railway Co. held on January 1st, 1885, which reads in part as follows:

"On motion of F. M. Hubbell the following preamble and resolutions were submitted to the meeting for its consideration, to-wit:

Whereas, the Des Moines, St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How, and James F. How, Trustee, on the 2nd day of January, 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises in the City of Des Moines which had theretofore been held and used by certain of the individual parties thereto for certain purposes and upon certain conditions set out in said contract, and

Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated and provided in the aforesaid contract to acquire, hold, use and en-

joy the real estate, property, right and franchises in the
272 City of Des Moines, east of Farnham Street in said

City of the aforesaid railway company and signatories
of said contract, acquired or held thereunder and to carry
out the purposes of the said contract of January 2nd, 1882,

Now therefore,

Resolved, that this Company accepts and ratifies so far
as its interests are affected thereby the Articles of Incorpora-
tion of the Des Moines Union Railway Company as in sub-
stantial accord, and compliance with the terms and conditions
of the said contract of January 2nd, 1882. And undertakes
to discharge all the obligations imposed upon it by said con-
tract in order to make effective the purposes of said Des Moines
Union Railway Company.

Resolved, That the proper officers of this Company be au-
thorized upon the issuance to it of the share of the bonds
and stock of said Des Moines Union Railway Company to
which it may be entitled under said contract to convey, as-
sign and transfer any interest of whatever name and char-
acter in and to the real state, franchises, choses in action
and rights in possession or contingent to all the property
in the City of Des Moines east of Farnham Street in said
City now held, enjoyed or claimed by either or all of the
signatories of said contract of January 2nd, 1882, or any
agent or trustee thereof purchased, acquired or held in pur-
suance of said contract.

The same having been duly considered was on motion adopt-
ed, all the stockholders present and represented voting
therefor.

273 Now, in Paragraph 7 of your answer in this case it
is admitted that the above is a true copy of the record
of proceedings had at said meeting, and I will ask you whether
it was your understanding when you offered said preamble
and resolutions at that meeting of the stockholders of the
Des Moines Northwestern Railway Co., that the deed that
How, Dodge and the railroad companies therein named were
directed to execute, would vest in the Des Moines Union Rail-
way Company the title to said property in fee absolute for its
own use and benefit?

A. No action was taken under that resolution. I had no
interest in the Des Moines Northwestern at that time of any
value. I simply offered the resolutions that were handed to
me by the Wabash people and offered them without paying any
attention to what they contained.

Complainants' counsel move to strike out the answer as not responsive to the question.

399X. Q. Have you any other recollection respecting that matter other than what you have just stated? A. No.

400X. Q. Was it your understanding when you offered that resolution that after How, Dodge and the other parties named therein should execute deeds to the Des Moines Union Railway Co. as directed in said resolution, that the railroad companies would thereafter have no right to use said terminal property excepting on such terms and conditions as might be fixed by the Des Moines Union Railway Co. or was it your understanding that said railroad companies would continue to have the right to use said terminals on the terms stated in the contract of January 2nd, 1882, to which reference is made in the resolution?

274 A. I had no understanding on the subject, I was simply offering resolutions prepared by the Wabash with the request that I offer them. I had no interest in the property, no valuable interest in the property, or in the transaction, and I do not remember of having any understanding or convictions about it at that time.

401X. Q. You have the record here, have you not, of the Des Moines Northwestern of that meeting of the stockholders?

A. Yes.

402X. Q. Who were present at the meeting of the Des Moines Northwestern at which the resolutions were adopted?

A. J. S. Runnells, by power of attorney, representing the stock of this company held and controlled by the Mercantile Trust Co.; F. M. Hubbell, president of the Narrow Gauge Railway Construction Co., representing its stock; Polk & Hubbell representing their own stock in the company. There was a proxy given by the Mercantile Trust Co. to Mr. Runnells.

403X. Q. That was a meeting of the stockholders of the Des Moines Northwestern Railway Co.?

A. Yes sir.

404X. Q. Held January 1st, 1885? A. Yes sir.

405X. Q. Do you remember who claimed to represent the Wabash Road at that meeting?

A. My inference from the looks of things is that the stock owned by the Wabash had been transferred to the Mercantile Trust Co. and the Mercantile Trust Co. gave a proxy to J. S. Runnells.

406X. Q. Is it true that at the date of that meeting neither you nor the firm of Polk & Hubbell had any interest in the Des Moines Northwestern Railroad?

A. The railroad was completed and leased to the Wabash, the Wabash was in the receivers' hands and hence the Des Moines Northwestern was also in the same plight and we did not think our stock was of any value.

407X. Q. Did you or the firm of Polk & Hubbell, at the date of that meeting have any stock in the Des Moines Northwestern Co.?

A. I do not know whether we did or not; the records say that Polk & Hubbell representing their own stock were present.

408X. Q. Of the Construction Company?

A. Of the Construction Company.

409X. Q. What interest did you have in the Construction Company?

A. I think that Polk & Hubbell had a half interest, and Clarkson and Runnells had a half interest in the Construction Company; its assets consisted of some stock in the Des Moines & Northwestern.

By Mr. Minnis:

410X. Q. You have said that the representative of the Wabash Company handed you the resolutions, and that you introduced them without examining them; I will ask you who handed you the resolutions?

A. I don't know whether they were handed to me by Mr. Runnells or whether they were sent from St. Louis to me or to him, but undoubtedly they were prepared by the Wabash.

211X. Q. Have you any personal recollection about that matter?

A. I know that these resolutions and the resolutions of November 8th, 1887, came to me as a surprise, I knew nothing about them until they were dropped in.

412X. Q. You do recall that you were surprised when they came to you?

A. I remember it was something new to me.

276 413X. Q. Then you must have examined them, didn't you? A. I heard them read.

414X. Q. You did know what was in them?

A. At that time I thought I knew what was in them without feeling any interest in the affair.

By Mr. Blodgett:

415X. Q. It is stated in those resolutions that were offered by you at that meeting of the stockholders of the Des Moines Northwestern Railway Company that the articles of incorporation of the Des Moines Union Railway Co. were in substantial accord with the contract of January 2nd, 1882, now, do you recollect anything about that matter or what you thought about that matter at the time that meeting was held?

A. No, I don't remember whether I had any thoughts except I was connected up with some big railroad men and I looked to them to say what should be done, and I did what they asked me to do.

416X. Q. Have any extension or spur tracks been constructed at any time since May 10th, 1889, from connections with the tracks of the Des Moines Union Railway Co. to industries or to connections with tracks of other railroad companies, with funds provided by yourself or the firm of F. M. Hubbell & Son?

A. I remember now of furnishing the right of way for about half a mile of track without compensation upon which a spur track was built.

417X. Q. And was that right of way acquired and were the spur tracks constructed upon it with funds provided by the firm of F. M. Hubbell & Son?

A. The right of way for this track I have in mind was furnished by me, and the funds to build the track were furnished by the Des Moines Union Railway Co.

277 418X. Q. The funds where funds were furnished by the Des Moines Union Railroad Co. for the acquisition of property and the construction of tracks were the proceeds of what is called surplus earnings or the proceeds of bonds?

A. Yes, all of the right of way that has been purchased and all of the land purchased and all of the tracks laid and improvements made were paid for by the Des Moines Union out of funds realized from the sale of Des Moines Union Railway bonds or by the use of what is known as surplus earnings.

419X. Q. You stated that you gave the right of way for one spur track, will you explain that a little more in detail?

A. We had what we thought was a valuable interest in the Des Moines Union Railway Co., and I did not hesitate to make a deed to the Des Moines Union Railway Co. of about half a mile of right of way.

420X. Q. I will ask you from what point to what point that spur track was built and whether it is was not built into property that was owned by you personally?

A. I could not have deeded the right of way if I had not owned the property.

421X. Q. It did lead into a tract of land owned by you?

A. Yes.

422X. Q. Will you please state a little more in detail where that spur track is located so that we may identify it on the map?

A. It commences at a point in the track that runs north and south near Twelfth Street, and runs easterly across Eleventh Street and Ninth Street, from thence it goes south

to a point just north of Morgan Street and also extends north to the north line of land that I owned at that time.

423X. Q. Was not that spur track built for the purpose of developing and increasing the value of property owned by you?

A. It was,—the right of way was granted for a two fold purpose, to make more valuable the Des Moines Union Railway Co., whose stock I was interested in, and also to enable industries to be located on that track and on my land, hoping that it might benefit all concerned.

424X. Q. Under those circumstances you thought it would be a fair deal for you to provide the right of way and the railroad company to lay the track?

A. I thought so, yes.

425X. Q. I want to know whether any extensions or spur tracks have been at any time constructed from the tracks of the Des Moines Union Railway Co. to industries or connections with tracks of other railroad companies with funds provided by any corporation in which you or the firm of F. M. Hubbell & Son are stockholders or officers?

A. The spur tracks that have been built, have been built by the Des Moines Union Railway Co. out of its funds.

Mr. Guernsey: Do you mean by that question the tracks built by the Des Moines Union Railway Co., is that what you refer to?

Mr. Blodgett: That is what I referred to in the last question.

426X. Q. Have spur tracks been constructed from connections with the Des Moines Union Railway Co. to industries by any other railroad or terminal company organized in the City of Des Moines in which yourself or the firm of F. M. Hubbell & Son are stockholders or officers?

A. Tracks have been built by the Des Moines Western Railway Co., which connects with the Des Moines Union tracks, the money to build those tracks was furnished by the
279 Des Moines Western Railway Co., in which I have an interest and am President.

427X. Q. How large an interest have you in that corporation?

A. Individually I have stock to the amount of \$18,500.

428X. Q. What percentage of the total stock is that?

A. The total stock is \$217,700.

429X. Q. Does F. M. Hubbell & Son & Co. Inc. or do you personally own and control the majority of stock in that company? A. We do.

430X. Q. About this right of way that you gave to the Des Moines Union, how large a tract of land did you own at the time you gave this right of way to the Des Moines Union Railway Co.? A. I had about 120 acres.

431X. Q. And about how long is that spur track that was constructed into that tract?

A. It was 2,000 feet long, north and south.

432X. Q. How many industries were located on that 2,000 feet or reached by the spur track?

A. Do you mean now?

433X. Q. Yes?

A. There are two planning mills, the Paragon Oil Co. and a warehouse that belongs to my estate, that is all I remember on that tract; there are some other little houses.

434X. Q. Did not the extension of the track of the Des Moines Union Railway Co. into the tract owned by you largely enhance the value of your property?

A. I think not, I think I would give \$10,000. if you would take it up.

435X. Q. How long have you owned the property?

A. 25 or 30 years.

436X. Q. Has it not increased very greatly in value since you owned it? A. Yes.

437X. Q. As compared with its value at the time the railroad track was extended into it has it advanced in value?

A. That land has advanced in value by reason of the paving of streets, the laying of water mains, gas mains and sewers, for which the owners of the real estate have paid.

438X. Q. So that while the property has largely advanced in value since the spur track was constructed you do not attribute the increased value to the construction of the spur track? A. No, I do not, I wish it was out.

439X. Q. Is it not Des Moines River bottom land?

A. Coon River bottom land.

440X. Q. And if the industries were removed would it be more valuable for farming or residence purposes?

A. I don't think it would be suitable for residences, it is too valuable for farms.

441X. Q. Those three or four industries that you have mentioned that are located on your land, do they furnish any amount of traffic to the Des Moines Union, or to the railroad companies that are interested in the Des Moines Union?

A. They furnish some traffic to the Des Moines Union and its tenant companies.

442X. Q. When you donated that right of way and constructed the spur track you expected a return, did you not, in the way of increased value of your property?

A. I hoped that it would increase the value of the property.

443X. Q. That is the reason why you extended it?

A. The reason I extended it was because I was intent on building up the Des Moines Union Railway Co. and its business.

444X. Q. Were you not more interested in developing your own property and increasing its value than getting traffic for the railroad?

A. No, the property was all right. I did not need the aid of the railroad to develop it, but I was willing to help the railroad expand by furnishing this right of way.

281 445X. Q. And it was a spur running out to the industries from the track of the Des Moines Union Railway?

A. It is a track 2,000 feet long north and south, parallel to Ninth, with a further track connecting that north and south track with the Des Moines Union north and south track that is about where 12th Street should be.

446X. Q. And is that the only spur track that has been constructed into or for the purpose of developing real estate owned by you? A. No.

447X. Q. Will you just mention the others so we may locate them on the map if we want to?

A. The Des Moines Terminal Company have built a good many tracks in that locality, I do not think I could mention them all without making a search.

448X. Q. You are engaged, are you not, in buying, selling and developing real estate in and about the city of Des Moines? A. Yes.

449X. Q. Has this track into this property, a large tract of yours, the track for which you donated the right of way, been a profitable investment for the Des Moines Union Railway Co.? A. This track I described a minute ago?

450X. Q. The one for which you donated the right of way?

A. I think it has been profitable to the Des Moines Union Railway Co., yes.

451X. Q. It is stated in Paragraph 31 of the answer in this case, as follows:

"These respondents have at all times maintained that under the proper construction of said lease (Exhibit P), the Des Moines Union Railway Co. was entitled to said surplus earnings, and that it received and appropriated the same
282 to its own use, with the knowledge and acquiescence of the complainants, and without objection on their part, prior to the 12th day of March, 1906. That since the said date, and upon the contention of the complainants that the Des Moines Union Railway Co. was not entitled to said sur-

plus earnings, they have been kept in a separate fund and have been permitted to accumulate".

Now can you state the amount of earnings that have been received and appropriated by the Des Moines Union Railway Co. to its own use and the purposes for which said earnings have been expended? A. I cannot.

452X. Q. It would take a long examination of your books to ascertain that? A. It would.

453X. Q. You say it would require an examination of the books and accounts of the company? A. Yes.

454X. Q. Can you state now the amount of the separate fund that has been accumulated from said surplus earnings and that is now in possession of or on deposit to the credit of the Des Moines Union Railway Co.?

A. I cannot state the amount.

455X. Q. Would that require a detailed examination of the books,

A. It would not take long to make a statement of the money deposited in banks to the credit of the Des Moines Union Railway Co. bearing three per cent interest; I think there is over \$300,000. of that kind of money.

456X. Q. It is stated in Paragraph 33 of your answer in this case as follows:

"These respondents further respectfully show to the Court that from and after May 10th, 1889, until the present time, monthly accounts have been rendered by the Des Moines Union

Railway Co. to the tenant companies, or complainants
283 and their predecessors in interest, under the contract,

and 'Exhibit P. to the Amended Bill', and that during said entire period (except only from February 11, 1891, to January 7th, 1892), said accounts uniformly did not credit the tenant companies with such surplus earnings and during said period said accounts were continuously audited and paid by the tenant companies without any claim that they were entitled to any credit on account of said surplus earnings, until about March 12th, 1906;"

Now, I will ask you to state whether it is true that from May 10th, 1889, to the present time, monthly accounts have been rendered by the Des Moines Union Railway Co. as provided in said contract of May 10th, 1889, to the railroad companies using said terminals, and that during said whole period, (excepting from February 11th, 1891, to January 7th, 1892) said monthly accounts gave no credit for any surplus earnings, and that said accounts were paid by the complainants and their predecessors down to March 12th, 1906, without claim that they were entitled to any credits on account of the so-called surplus earnings of the Terminal Company?

A. Most of the accounts have been made out against the tenant companies, from May 10th, 1889, up to the present time. The surplus earnings accruing between February 11th, 1891, and January 7th, 1892, I understand, were credited to the tenant companies, and that no complaint or demand that the surplus earnings belonged to the tenant companies as of right was asserted until March 12th, 1906.

284 457X. Q. After the contract of 1889 went into effect were not the so-called surplus earnings credited on the monthly bills of the railroad companies for quite a period of time?

A. From 1889 to 1891 the surplus earnings were a negligible quantity, scarcely anything, I do not know whether they were credited to the companies.

458X. Q. Whatever they were were they not credited on the bills? A. I don't know.

459X. Q. There was a time when they ceased to be credited on the bills, was there not? A. Yes.

460X. Q. And did they not cease to be credited in pursuance of a resolution that was passed by the board of directors or stockholders of the Terminal Company?

A. They were credited in the first place upon a resolution of the board of directors, and then later on they ceased to be credited by virtue of a resolution of the board of directors.

461X. Q. And the resolution of the board of directors of the Des Moines Union Railway Co. under which this crediting of the surplus earning ceased, was the one passed January 7th, 1892, and set out on Page 61 of the printed amended bill and which provides for the accumulation of cash capital to enable the Des Moines Union Railway Co. to pay current bills before the monthly bills could be paid by the railroad company.

Defendants' counsel objects to this as not the proper construction of the resolution which does not provide for a cash capital but recites the necessity of a cash capital.

A. On the 7th of January, 1892, the resolution was passed as follows: "Therefore be it resolved: that until the further action of the Board, the sums received as rents of real estate and all switching charges shall not be credited upon the account of the tenant companies, but shall be used for the aforesaid purposes", and after the passage of the resolution the crediting of such amounts was terminated.

462X. Q. Have you read all of the resolution?

A. I have read the resolution, but not the preamble.

463X. Q. Will you now read the preamble or the whereas of the resolution also.

A. Yes, it will be found on page 61 of the complainants' bill and the preamble is as follows, "Whereas this company

is in need of a cash capital with which to purchase supplies and pay current bills which come in before it receives its monthly revenues from the tenant companies; Therefore be it resolved &c."

464X. Q. And then follows the resolution as you have read it?

A. Yes, I read it once before, I thought you would not want it again.

465X. Q. It is stated in paragraph 28 of your answer in this case that the complainants are both of them estopped from now or hereafter setting up or claiming that the Des Moines Union Railway Co. is not the owner of the terminal property in controversy by reason of the fact that the predecessors of complainants for a valuable consideration, sold and transferred the terminal property in question to the Des Moines Union Railway Co. Now, do you know of any deed or conveyance of any kind that has been at any time executed by either of the complainants or by any predecessor of either of the complainants that transferred or was intended to transfer the entire title and estate that was in them, or either of them to the Des Moines Union Railway Co.?

A. All of the deeds to the Des Moines Union Railway Co. appear to be straight warranty deeds.

466X. Q. But do you know of any conveyance that has been made by the complainants or their predecessors to the Des Moines Union Railway Co.? A. I do.

467X. Q. Will you mention what they are?

A. James F. How, Trustee, made a deed to the Des Moines Union, G. M. Dodge, F. M. Hubbell, J. S. Polk, and a great many other people.

468X. Q. The Des Moines & St. Louis made a deed, didn't they? A. They made a deed.

469X. Q. Are the deeds you have just mentioned the deeds to which you refer as having been executed by the predecessors of the complainants which you say have vested the title to the terminal property in the Terminal Company?

A. Some of them are.

470X. Q. Are there any others?

A. I don't think I mentioned the St. Louis, Des Moines & Northern, that company made a deed, and that is the only one I remember now.

471X. Q. Aside from those you have already mentioned?

A. Yes.

472X. Q. There was a deed executed by the Des Moines & St. Louis Railroad Co. to the Des Moines Union Railway Co. on or about February 21st, 1888; will you look at that deed and see if it does not purport to convey to the Des Moines

Union Railway Co. all of the railroad of the Des Moines & St. Louis Railroad Co. in the City of Des Moines.

Defendants' counsel objects to this as not the best evidence, and suggests to the witness that if he is asked to state what it conveys he read the description in the deed in his answer.

473X. Q. I will ask him to read into the record the description in the deed?

A. (Reading) "Know all men by these presents, That, 287 the Des Moines and St. Louis Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, for and in consideration of One Dollar, to it paid by the Des Moines Union Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, the receipt whereof is hereby acknowledged, does hereby sell and convey unto the said Des Moines Union Railway Company, the following described premises, franchises and real estate, situated in the City of Des Moines, Polk County, Iowa.

Official Plat Lot Twelve (12) in Block twenty-two (22) Des Moines; Lot two (2) in Block twenty-two (22) Demoine; Lot Ten (10) in Block Twenty-one (21) Demoine; Lots thirteen (13) and fourteen (14) in Block twelve (12) Demoine; Lots eight (8) and fifteen (15) in Block fifteen (15) Demoine; Lot eight (8) in Block Sixteen (16) Demoine; Lot three (3) in Block "I" Scott and Deans Addition; Lot Twelve (12) in Block "D" Scott and Dean's Addition; Lot four (4) in Block Thirty (30) Fort Des Moines; Lot seven (7) in Block Nine (9) Fort Des Moines; Lot Two (2) in Block Nine (9) Fort Des Moines; Lot Two (2) in Block four (4) in Fort Des Moines; East one-half ($\frac{1}{2}$) of Lot six (6) in Block Nine (9) Hoxie's Addition; Lot three (3) in Block Eighteen (18) Hoxie's Addition; south one-half ($\frac{1}{2}$) of Lot Five (5) in Block twenty-two (22) Keene and Poindexter's Addition, south one-half ($\frac{1}{2}$) of Lots One (1) Two (2) and three (3) in Block thirty-one (31) Keene and Poindexter's Addition; North part of Lot 288 thirty-nine in Brooks & Co's Addition. And all of the real estate within the City of Des Moines, Iowa, which is the property of the grantor, together with all real estate, which may hereafter be acquired by this grantor either by condemnation proceedings or otherwise. Also all its embankments, bridges, turnouts, side-tracks, buildings and structures, water tanks, and fixtures, shops, engine and other houses, depots, turntables and all its railroad property acquired and to be acquired, and everything appurtenant to said railroad, and all franchises and rights it may have acquired by grant, donation, purchase or otherwise, and particularly

all rights, franchises and privileges granted by the City of Des Moines, Iowa, under an ordinance, "granting the right of way to the Des Moines and St. Louis Railroad Company and its assigns, over, across, along and upon certain streets and alleys in the City of Des Moines, Iowa, and the right to bridge the Des Moines River on the south alley in said City between Court Avenue and Vine Streets." And the said Des Moines and St. Louis Railroad Company hereby covenants to Warrant and Defend the said premises against all the lawful claims of all persons whomsoever, claiming by, through or under it. Signed this 21st day of February, A. D. 1888.

In witness whereof, the said Des Moines and St. Louis Railroad Company has caused these presents to be signed in its corporate name by its President and attested by its Secretary, and has caused the corporate seal of said Company to be hereunto affixed as authorized, the date and year last above written.

(Corporate Seal)

THE DES MOINES AND ST. LOUIS
RAILROAD COMPANY,

By J. S. Clarkson, President.

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Attest: F. M. Hubbell,
Secretary.

474X. Q. Is this one of the deeds to which you refer in Paragraph 28 of your answer wherein you state that the predecessors of the complainants for a valuable consideration sold and transferred the property in question to the Des Moines Union Railway Co.?

A. If the Des Moines & St. Louis is a predecessor then this is one of the deeds.

Complainants' counsel object to the answer as not responsive to the question.

475X. Q. (474X. Q. repeated)

A. The Des Moines & St. Louis Railroad Company did not put a dollar of money into the purchase of the real estate described in that deed, the money was advanced by the Wabash, St. Louis & Pacific Railway Co., and the title taken in the name of the Des Moines & St. Louis for convenience or some other reason, and the Des Moines & St. Louis made this deed at the request and behest of the Wabash, St. Louis & Pacific.

476X. Q. That is a deed through which the Des Moines Union Railway Co. now holds title to the property therein described, is it not

A. I will have to let the court construe it.

477X. Q. I want to know whether that is one of the deeds to which you refer in Paragraph 28 of your answer wherein you state that the predecessors of the complainants for a valuable consideration sold and transferred the property in question to the Des Moines Union Railway Co.?

A. I answered that if the Des Moines & St. Louis was really a predecessor then this is one of them.

290 Complainants' counsel moves to exclude the answer because it is not responsive to the question.

478X. Q. (477X. Q. repeated).

A. I cannot say whether the Des Moines & St. Louis Railroad was a predecessor. I always understood that it was a paper railroad, but if it is one of the predecessors then this deed made by it is one of the deeds under which the Des Moines Union Railway Co. claims title.

By Mr. Minnis:

479X. Q. That is not the question. The question is whether you referred in the part of your answer that has been read to you to this deed?

A. I am unable to make any other answer to this question except to say that this deed in question has already been introduced in evidence by the plaintiffs and I do not feel competent or willing to construe it.

480X. Q. What deeds did you refer to in that part of your answer which is paragraph 28, which states that for a valuable consideration the Des Moines & St. Louis sold and transferred the property in question to the Des Moines Union Railway Co.?

A. I do not know any more than what I have told you.

By Mr. Blodgett:

481X. Q. We are not asking you to construe the deed, we are asking you to construe your own answer; what did you mean by that, what did you refer to in that paragraph?

A. I referred to the deeds mentioned in the resolution of November 8th, 1887, to be made by James F. How, trustee, James F. How, G. M. Dodge, the Des Moines & St. Louis Railroad Co. and the St. Louis, Des Moines & Northern Railroad Co.

291 482X. Q. Those are the deeds to which you referred in that paragraph of that answer?

A. Those are the only deeds I can remember now, there may have been others.

483X. Q. Then, as I understand, those deeds, the one from the Des Moines & St. Louis to the Des Moines Union

Railway Co. were executed in pursuance of the resolution of November 8th, 1887? A. I understand so.

484X. Q. Attached to the bill of complaint in this case as Exhibit H. is a copy of the record of certain proceedings had at a meeting of the Board of Directors of the Des Moines & St. Louis Railroad Co., held November 8th, 1887 which reads as follows:

"Resolved, That the President and Secretary of this Company, be, and they are hereby authorized and directed to execute to the Des Moines Union Railway Company a deed conveying to it all its real estate, rights of way, franchises, road-bed and other property of said Company lying and being in the City of Des Moines, east of Farnham Street, whether the same was acquired by grant from City of Des Moines or by purchase or condemnation, this resolution being offered for the purpose of carrying out the contract of date January second 1882, entered into by and between this Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, and others.

"Said motion having been duly considered was unanimously adopted.

"There being no other business before the meeting, it adjourned. F. M. Hubbell, Secretary."

Now, was this deed from the Des Moines & St. Louis Railroad Co. to the Des Moines Union Railway Co. to which we have been referring, executed under that resolution? A. Yes, I think so.

485X. Q. Now, I will ask you whether at the time you or the firm of F. M. Hubbell & Son bought stock in the Des Moines Union Railway Co. you considered that that deed executed by the Des Moines & St. Louis Railroad Co. to the Des Moines Union Railway Co. in pursuance of that resolution, vested the entire title to the possession and use of the property therein described in the Des Moines Union Railway Co.? A. I did.

486X. Q. Was the Des Moines & St. Louis Railroad Co. a predecessor in title to the Wabash Railroad Co. one of the complainants in this case.

Defendants' counsel objects to the question as calling for a conclusion.

A. I should think it was.

487X. Q. Was there not a deed executed on or about November 10th, 1887, by the St. Louis Des Moines & Northern Railroad Co. to the Des Moines Union Railway Co. which appears in the record in this case as Plaintiffs' Exhibit No. 21?

A. Yes, there appears to be a deed made by the St. Louis, Des Moines & Northern Railway Co. to the Des Moines Union, a quit claim deed.

488X. Q. Now, is that one of the deeds to which you refer in Paragraph 28 of your answer when you state, "That the predecessors of complainants, for valuable consideration, sold and transferred the terminal property in question to the Des Moines Union Railway Co.?" A. Yes.

293 489X. Q. Was the St. Louis Des Moines & Northern Railway Co. a predecessor in title of the Chicago, Milwaukee & St. Paul Railway Co., one of the complainants in this case? A. Yes, I think so.

490X. Q. Do you know of any deeds or conveyances that have been made at any time by the complainants, or their predecessors, to the Des Moines Union Railway Co., other than this one made February 21st, 1888, by the Des Moines & St. Louis Railroad Co. to the Des Moines Union Railway Co. and this one made November 7th, 1887 by the St. Louis, Des Moines & Northern Railway Co. to the Des Moines Union Railway Co.?

A. I do not know of any other deeds except these two that were made by the predecessors of the complainants.

491X. Q. Attached to the bill of complaint in this case as Exhibit D., is a copy of the record of certain proceedings had at a meeting of the stockholders of the St. Louis, Des Moines & Northern Railway Co. held January 1st, 1885 which reads as follows:

"On motion of F. M. Hubbell, the following preamble and resolutions were submitted to the meeting for its consideration, to-wit, and were unanimously adopted:

"Whereas, the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines and Northern Railway Company, G. M. Dodge, and James F. How, and James F. How, Trustee, on the 2nd day of January, A. D. 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate, and franchises, in the City of Des Moines, which had theretofore been held and used by certain
294 of the individual parties thereto, for certain purposes and upon certain conditions set out in said contract, and,

"Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated and provided in the aforesaid contract to acquire, hold, use and enjoy the real estate, property, rights and franchises in the City of Des Moines east of Farnham Street in said City of the

aforesaid railway companies and signatories of said contract acquired or held thereunder and to carry out the purposes of the said contract of January 2nd, 1882.

"Now therefore,

"1. Resolved, That this company accepts and ratifies so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company;

"II. Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled under said contract to convey, assign and transfer to said Company all its right, title and interest of whatever name and character, in and to the real estate, franchises, choses in action and rights in possession of contingent to all the property in the City of Des Moines east of Farnham Street in said City now held, enjoyed or
295 claimed by either or all of the signatories of said contract of January 2, 1882, or any agent or trustee thereof purchased, acquired or held in pursuance of said contract."

Now I will ask you whether at the time, you, or the firm of F. M. Hubbell & Son, bought stock of the Des Moines Union Railway Co., you considered that a deed, executed by the St. Louis Des Moines & Northern Railway Co. to the Des Moines Union Railway Co., in pursuance of those resolutions would vest the entire title to the terminal property therein described in the Des Moines Union Railway Co.?

A. There was no deed made by the Des Moines & Northern Railway Co. under that resolution, passed January 1st, 1885. I understood that the deed made by the St. Louis, Des Moines & Northern Railway Co. to the Des Moines Union Railway Co. under the resolution of November 8th, 1887, conveyed an unencumbered title.

492X. Q. In fee?

A. In fee; I believe it is a quit-claim deed.

493X. Q. Now, was it your understanding at the time you offered those resolutions and at the time of their adoption that a deed made in pursuance of those resolutions would vest an unencumbered title in fee to the property therein described?

A. In January, 1885, I had no valuable interest in any of these properties, I didn't have any understanding, I didn't try to understand it, I simply offered motions that were pre-

sented to me by the Wabash interests and voted for them. The same is largely true of the resolution passed November 8th, 1887, that I relied upon the big men in the concern and supposed they were doing just what they wanted to, and just what was right. I did not consider it or could not claim to have understood much about it.

296 494X. Q. It is stated in Paragraph 28 of the answer in this case that F. M. Hubbell & Son in purchasing stock in the Des Moines Union Railway Co. now owned by them relied upon the fact that the contract of January 2nd, 1882, had been rescinded and annulled; now, in stating that you relied upon the fact that the contract of January 2nd, 1882, had been rescinded and annulled do you mean that you relied on something contained in the amendments or alleged amendments of the article of incorporation of the Des Moines Union Railway Co. that that record shows were adopted April 8th, 1890? A. I so understood it.

495X. Q. What was there in those amended articles that you understood as affecting the title of the Des Moines Union Railway Co. in those terminals?

Defendants' counsel objects to the question, because it assumes that the witness said there was something in the amended articles that affected the title to the terminal whereas he has testified just the reverse of it several times.

By Mr. Minnis:

496X. Q. What clause, or sentence, or matter in the alleged amended articles did you rely on as having rescinded and annulled the contract of 1882?

A. Article 15 of the amended articles.

By Mr. Blodgett:

497X. Q. Was not the Des Moines & St. Louis Railroad Company a party to that contract of January 2nd, 1882?

A. As I remember, it was.

498X. Q. Was not the Des Moines & Northwestern Railway Co. a party to that contract? A. Yes.

297 499X. Q. Was not the St. Louis, Des Moines & Northern Railway Co. a party to that contract?

A. Yes.

500X. Q. Now, will you please state what act of any one of those three railroad companies you relied upon as constituting a rescission or as amounting to an annulment of the contract of January 2nd, 1882, by the parties to that contract, or their assigns?

A. I relied upon the conduct of all the parties from March 31st, 1888, up to the present time.

501X. Q. Can you specify any particular acts on which you relied as having amounted to a rescission or an annulment of that contract by the parties thereto?

A. I think the parties to that contract abandoned it right from the start.

502X. Q. Do you know of any writing executed by any one of those three railroad companies, in which they consented to any abandonment of that contract, or to a rescission of that agreement?

A. I do not remember of any contract. That conduct of conveying the property to the Des Moines Union and taking a lease and paying the rent I considered an abandonment of the contract of January 2nd, 1882.

503X. Q. In Paragraph 31 of the answer in this case it is stated as follows: "These respondents aver that the said original agreement, Exhibit P, has never been modified or changed with respect to the matter of said surplus earnings, but that it has been expressly ratified and confirmed." Now I will ask you whether that contract, Exhibit P, the contract of May 10th, 1889, has been modified or changed with respect to any matter other than said surplus earnings?

A. The contract of July 31st, 1897, ratifies and confirms the contract of 1889 and adds something to it.

298 504X. Q. The contract of 1897, Exhibit R, what does it add to the contract of May 10th, 1889.

Defendants' counsel objects to the question as not being the best evidence, the contract itself being in evidence.

A. All the parties who had entered into the contract of May 10th, 1889, had become insolvent, and that contract of July 31st, 1897, was made in order to have the obligation of live companies to the lease, and as the stock of the Des Moines Union had changed between 1889 and 1897, this last contract recited who were at that time the stockholders..

505X. Q. Now, does the contract of July 31st, 1897, change the contract of May 10th, in any other respect than in the matter you have just mentioned?

Defendants' counsel objects to the question for the same reason, that the contracts are both in the record and are the best evidence, and the question calls for a conclusion.

A. I have not read the contracts for many months and cannot tell whether the last one differs especially from the one of May 10th, 1889.

506X. Q. There is attached to the answer in this case as a part of Exhibit No. 3, a proposition signed by Polk & Hubbell, which reads in part as follows:

"New York, October 9th, 1886. To the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Co. Gentlemen. We make the following proposition in regard to the Des Moines Northwestern Railway. The mortgage to be foreclosed to cover all advances made by the Wabash Company to the D. M. N. W. Ry. Co. A good and perfect title free from all liens and encumbrances (including all claims that the receivers may have against it) to be made to Polk & Hubbell for said railroad (and all its property, rights, franchises, all its interest in the equipment) and a one fourth interest in the terminal property in Des Moines, and 5037 shares of stock in the D. M. N. W. Ry. Co."

Now, I will ask you whether you are the Mr. Hubbell of the firm of Polk & Hubbell who submitted that proposition to the Purchasing Committee? A. I am.

507X. Q. Was that proposition made by you, or the firm of Polk & Hubbell, accepted by said Wabash Purchasing Committee?

A. The contract of October 9th, 1886, was accepted by the Purchasing Committee.

508X. Q. As a part of that same Exhibit No. 3, attached to your answer in this case is a copy of a contract dated September 10th, 1887, the first, third and fifth clauses of which are as follows:

"1st. For the purpose of enabling Messrs. Polk & Hubbell to bid in the Des Moines Northwestern Railway at the foreclosure sale above referred to, the Committee will furnish to said Polk & Hubbell the general mortgage bonds required to make payment of said bid, so far as the same may be required and can be used in that way; the cash payment required by the decree shall be advanced by Messrs. Polk & Hubbell and credited upon the purchase price of the property above mentioned.

"2nd. The requirement of the agreement hereto annexed, for the delivery to the Committee by Messrs. Polk & Hubbell of a bond for \$450,000, shall be satisfied by the delivery of such bond secured by first mortgage as provided in proposition of October 9th, 1886, executed by a new corporation organized for that purpose, and holding the property disposed of at such sale.

5th. Simultaneously with the execution and delivery of said bond the Committee will convey to Messrs. Polk and Hubbell, or their assignees, the one-fourth interest in the terminal property at Des Moines, and will transfer also 5,037 shares of stock of the Des Moines Northwestern Railway Company,

and also the interest of the parties of the second part in the equipment of said Des Moines Northwestern Railway. It is hereby understood that the rolling stock of the New York & Pacific Car Trust Association is not included in this agreement."

"Simultaneously with the conveyance above mentioned one fourth interest in the terminal property at Des Moines the same shall be mortgaged back to the Purchasing Committee for further security of the said \$450,000. In case, however, the terminal property at Des Moines shall be merged in a terminal company either before or after the transfer of one-fourth interest as above, the bonds and stock received from the Terminal Company in exchange for said one-fourth interest shall be transferred in lieu of the property to Messrs. Polk & Hubbell or their assignees, or transferred by them to the Committee to be held by the Committee as a further security for the payment of the \$450,000. above mentioned."

Now, I will ask you whether it was under that contract or under a mortgage foreclosure that took place in pursu-
301 ance of that contract that you or the firm of Polk & Hubbell acquired the railroad and property of the Des Moines Northwestern Railway Co.?

A. It was under a foreclosure that Polk & Hubbell acquired the Des Moines Northwestern Railway.

509X. Q. And that foreclosure was made in pursuance of that agreement? A. Yes.

510X. Q. Was one-fourth of the stock of the Des Moines Union Railway Co. afterwards on or about April 8th, 1890, issued to the Des Moines & Northwestern Railway Co.?

A. Yes.

511X. Q. Did the Des Moines & Northwestern Railway Co. receive that one-fourth of the stock of the Des Moines Union Railway Co. into its treasury without the payment of any consideration for the same?

A. That one-fourth interest belonged to Polk & Hubbell, and Polk & Hubbell caused it to be transferred or issued to the Des Moines & Northwestern Railway Co.

512X. Q. Was that stock received by Polk & Hubbell in pursuance of that agreement that you had with the Purchasing Committee dated September 10th, 1887?

A. Yes, the Purchasing Committee conveyed that stock to F. M. Hubbell, successor to Polk & Hubbell, in accordance with the agreements of October 9th, 1886, and September 10th, 1887.

513X. Q. The question is whether the contracts you made with the Purchasing Committee October 9th, 1886, and Sep-

tember 10th, 1887, included one fourth of the stock of the Des Moines Union and whether ultimately that stock was transferred by the Purchasing Committee to you or to the railroad company in pursuance of that agreement?

A. Yes, I think it was transferred to me and I had it issued to the Des Moines & Northwestern.

302 514X. Q. And when the Purchasing Committee furnished the mortgage bonds under which the Des Moines Northwestern property was foreclosed or under which the mortgage on the property was foreclosed, and caused one fourth of the stock of the Des Moines Union Railway Co. to be transferred to you or to the Des Moines Northwestern, did you not regard the Purchasing Committee as having fulfilled its agreement?

A. I thought the Purchasing Committee fulfilled its agreement in furnishing us the bonds with which to bid off the Des Moines Northwestern Road and in furnishing us a fourth interest in the Des Moines Union Railway.

515X. Q. One fourth of the stock?

A. One fourth of the stock and one fourth of the bonds.

516X. Q. So that you do not now claim that the Purchasing Committee is shy on account of anything they agreed to deliver to the firm of Polk & Hubbell under these agreements last referred to?

A. We do not make any claim against the Purchasing Committee under those contracts.

517X. Q. When the Des Moines & Northwestern Railway Co. was afterwards consolidated, or united with the Des Moines & Northern Railway Co. under the name of the Des Moines, Northern and Western Railway Co., did that one-fourth of the stock of the Des Moines Union Railway Co. then become an asset of the Des Moines, Northern & Western Railway Co.?

A. It did.

Not being able to complete the taking of these depositions on this day I adjourned the further taking of the same until 10 A. M., tomorrow, June 3rd, 1911.

.....
Examiner.

303 On June 3rd, 1911, pursuant to adjournment as above stated, I resumed the taking of said depositions as follows:

Present: Wells H. Blodgett, Esq., J. L. Minnis, Esq., and J. C. Cook, Esq., solicitors for complainants, and N. T. Guernsey, Esq., solicitor for defendants.

Frederick M. Hubbell, in continuation of his deposition commenced on May 31st, 1911, testifies as follows:

Cross-Examination Resumed

By Mr. Blodgett:

518X. Q. You have the record book, have you not, of the Des Moines & Northwestern Railway Co., showing the proceedings had at meetings of the stockholders and Board of Directors of that company between January 1st, and April 8th, 1890; will you examine the record book and see if you find there in the proceedings of the stockholders or directors, between January 1st, and April 8th, 1890 any resolutions designating any person as an agent or proxy to attend a meeting of the stockholders of the Des Moines Union Railway Co. and vote either for or against any proposed amendments to the articles of incorporation of that company.

A. I do not find any such resolution.

519X. Q. Have you the record book of the St. Louis, Des Moines & Northern Railway Co. showing the proceedings had at meetings of the stockholders and board of directors of that company between January 1st, and April 8th, 1890?

A. I have.

520X. Q. Will you please examine that book and see whether you find any resolution passed at any meeting of the stockholders or board of directors of the St. Louis, Des Moines & Northern Railway Co. between January 1st, and April 8th, 1890, designating or appointing any one as agent or

304 proxy of that company and authorizing such person to attend any meeting of the stockholders of the Des Moines Union Railway Co. and vote any stock held or owned by the St. Louis, Des Moines & Northern Railway Co. in the Des Moines Union Railway Co. either for or against any proposed amendments to the articles of incorporation of the Des Moines Union Railway Co.?

A. I do not find any such resolution.

By Mr. Minnis:

521X. Q. Turn to page 39 of your answer, Exhibit No. 3, what is that exhibit?

A. It is the petition in the case of Des Moines Northern & Western Railway Co. and Des Moines Union Railway Co. vs. James F. Joy, O. D. Ashley, Thomas F. Hubbard, and Edgar T. Welles.

522X. Q. That petition was filed in the District Court of Iowa, in and for Polk County? A. Yes.

523X. Q. Now, refer to the beginning of the last sentence on page 39, which reads:

"That at the same time what is known as the 'terminals' in Des Moines, consisting of the property of the Des Moines Union Railway Company, as it now is known, which has been constructed, and which was a part of a railway known as

the Des Moines & St. Louis Railway, extending from Farnham Street in the said city of Des Moines to Albia in the county of Monroe and state of Iowa had been mortgaged by the said Des Moines & St. Louis Railway Company to secure railway bonds issued by the said Wabash, St. Louis & Pacific Railway Company.

"The plaintiffs further state that prior to the 29th day of October, 1886, suits to foreclose the mortgages which
305 had so been executed upon the property of the Des Moines Northwestern Railway Company and upon the terminal property, being a part of the property of the Des Moines & St. Louis Railway Company, and the said properties were about to be sold at said foreclosure sale, the proceedings therefor being then pending in the Circuit Court of the United States, in and for the Southern District of Iowa, Central Division."

Now refer to the last sentence on page 41:

"That after the said purchase was completed as aforesaid, it was mutually agreed between the said Polk & Huddell, the Des Moines & Northwestern Railway Company and the defendants that what was known as the 'terminal' property, that is to say, so much of the property formerly belonging to the Des Moines & St. Louis Railway Company as lay between Farnham Street in the city of Des Moines upon the west and Twenty-second street in the city of Des Moines upon the east, should be held and owned by a separate corporation;"

Now refer to page 43, the bottom of the page, being the last matter at the bottom of the page:

"State of Iowa, Polk County—ss. F. M. Huddell being first duly sworn, upon his oath said, that he is the President of the Des Moines, Northern & Western Railroad Company; that he has read the foregoing petition, and verily believes the statements therein contained are true."

Now I will ask you if at the time you made that affidavit you believed that those allegations in the petition which I have referred to were true?

A. That petition was prepared by Mr. Cummins, and
306 I relied on him to not make any statement but what was correct; I don't think I considered it seriously.

524X. Q. Well, you read the petition, didn't you?

A. I supposed that I did, but, of course, I cannot remember that I did.

525X. Q. And the Mr. Cummins, that is Senator A. B. Cummins, was the attorney, was he not?

A. Yes sir, Senator Cummins.

526X. Q. He was familiar with the facts stated in the petition, was he not? A. It seems not.

527X. Q. He was supposed to be?

A. He was supposed to be, yes.

528X. Q. And you said yesterday that you were certain he would not do a thing without authority; are you not equally certain that he would not make a misstatement of facts in a petition and have you swear to it?

A. Not if he knew it was a misstatement, he would not.

529X. Q. You did, as a matter of fact, believe the statements to be true at the time you signed the affidavit, did you not?

A. I did not believe that the Des Moines & St. Louis Railroad owned the terminals in the City of Des Moines at that time.

530X. Q. That is not the question, the petition does not say that the Des Moines & St. Louis owned the terminals at that time, but the petition does say that the terminals or so much of the property formerly belonging to the Des Moines & St. Louis Railway Co. as lay between Farnham Street on the west and Twenty second Street on the east?

A. This exhibit calls it the Des Moines & St. Louis Railway instead of calling it a railroad.

531X. Q. Yes, and railway and railroad is all the same thing, is it not?

A. It does not seem to be in the name.

532X. Q. Des Moines & St. Louis Railway Co., there was not any Des Moines & St. Louis Railway Co., it was the Des Moines & St. Louis Railroad Co.?

A. That was the name of it.

533X. Q. Well, you understood at the time you made the affidavit that the facts stated in the petition were true, did you not?

A. This petition says that the property from Farnham Street had been mortgaged, that is not right.

534X. Q. That mortgage was released?

A. The Des Moines & St. Louis never mortgaged the property inside of the limits of the city.

535X. Q. The mortgage will go for itself, will it not?

A. Yes.

536X. Q. Do you mean to tell me that you verified this petition and made a false statement?

A. I purchased from the Purchasing Committee—

537X. Q. You swore that it was true, now it was true or it was not, which was it, the affidavit you made was either true or it was not? A. In what respect?

538X. Q. In the respect that the part of the terminal property beginning at Farnham Street formerly belonged to the Des Moines & St. Louis Railway?

A. It was not true, that that property was mortgaged, that was one error. If you will permit me we were trying to collect a debt and I was not trying to see whether all the allegations about the names of railroads and what they had agreed to do, that was not uppermost, I was trying to collect a just debt against the Purchasing Committee.

539X. Q. The petition contains recital of facts that you swore were true?

A. I swore to the petition, no doubt about that.

540X. Q. You were a witness in the mile track case, I believe? A. Yes.

308 541X. Q. Being a suit by the Chicago, Milwaukee & St. Paul Railway Co. against the Des Moines Union Railway Co. in the District Court of Polk County, Iowa, tried within the last two years, tried in 1910? A. I think so.

542X. Q. Now while you were upon the witness stand you were examined with respect to which railroad company placed the third rail between Fifth Street and the round house, were you not? A. I don't remember if I was.

543X. Q. I refer to page 44 of volume 1 of a transcript wherein you were asked this question by Mr. Vroman, "Q. You say you commenced at Eleventh Street and built west to Boone. Did you build east from Eleventh Street; and you answered as follows, according to the transcript, "That depends on whether the Des Moines & St. Louis got into Des Moines first. I am unable to say whether the Des Moines and St. Louis built its road out to the round house out near Fourteenth Street and the Narrow Gauge put a third rail in to get down to the depot, or whether the Narrow Gauge Co. built a narrow gauge road from Eleventh Street to the depot, and when the Des Moines & St. Louis came into the city it laid a third rail, I do not know which was first;" did you make that answer? A. I suppose I did.

544X. Q. That was true, was it not, according to your best knowledge and belief?

A. At that time, but I am satisfied now that the broad gauge was the last road to get into the city, and it laid from the Union Station a third rail to a point west of the water works.

545X. Q. But otherwise you are still satisfied with the answer to the question, are you?

A. I don't think the Des Moines & St. Louis built any
309 road at all anywhere.

546X. Q. I called your attention to Exhibit 3 to your answer wherein you made affidavit to the petition; I

have now called your attention to your testimony in the mile track case which you gave in 1910 wherein you stated that the Des Moines & St. Louis Railroad extended to Farnham Street; I will now ask you if during the trial of the mile track case you did not ascertain that it was contended by the complainants in this case and by the complainant in that case that a railroad cannot sell or dispose of any other part of its line?

A. I have heard recently that Judge Cook contends that a railroad company cannot sell a part of its line.

547X. Q. Now, it is since you learned of that that you have first made any record by testimony or otherwise of your belief that the Des Moines & St. Louis Railroad Co. did not extend to Farnham Street?

A. That information has no effect on my testimony. I have testified that the Wabash St. Louis & Pacific built the road from Albia to the Union Station and my best judgment is that it laid a third rail from the Union Station to a point west of the waterworks and that they did this work after the Des Moines Northwestern and St. Louis, Des Moines & Northern were running trains into the Union Station at Des Moines.

Cross-Examination

By Mr. Cook:

548X. Q. I suppose you say that the Wabash Railroad Co. built the line of road from Albia to the Union Station in Des Moines because that company furnished the money which built the road?

A. And because the Wabash Road let the contract to James F. How, as its agent, to build the road.

549X. Q. Now, you remember giving your testimony 310 by deposition before J. P. Blaze a Notary Public in the City of Des Moines on or about the 31st day of December, 1909, in a suit by the Chicago, Milwaukee & St. Paul Railway Co. against the Des Moines Union Railway Co. in the Polk County District Court, do you not?

A. I remember that I testified.

550X. Q. You were then asked the following questions and gave the following answers, did you not; "Int. 3. Did you live here during the existence of a railroad, known as the St. Louis, Des Moines & Northern Railway Company?

A. I did.

"Int. 4. Did said railroad company operate a railroad, and if so what was the point of beginning and terminus?

A. It began about Eleventh Street, Hoxie's Addition, in Des Moines, and was a narrow gauge road.

"Int. 5. And from Eleventh street to where did it operate?

A. It operated to Fifth Street, right south of the Court House.

"Int. 6. It did not go west of Eleventh Street then?

A. It was originally built from Eleventh Street to Boone; it let a contract for the construction—

"Int. 7. From Eleventh Street to Boone? A. Yes.

"Int. 8. But it actually operated only between Eleventh & Fifth Street; is that the idea?

A. No, it operated from Fifth Street to Boone.

"Int. 9. Then the facts are that the St. Louis, Des Moines & Northern built and operated a narrow gauge railroad from Fifth Street, in Des Moines, where the Union Depot is now, to Boone, Iowa?

A. I don't know that the St. Louis Des Moines & Northern built the narrow gauge road from 11th street to 5th street. There was a narrow gauge road built; that is, there was a three-rail track built from 11th street to 5th street, 311 and the St. Louis, Des Moines & Northern did operate down to the Union Station.

"Int. 10. And it also built and operated from 11th Street west, and North to Boone?

A. It built under a contract with the Narrow Gauge Railway Construction Company, from 11th Street to Boone.

"Int. 11. Did it operate the line so built from 11th Street to Boone? A. Yes.

"Int. 12. And it also operated in connection therewith the line, by whomsoever built, from 11th Street east to Fifth Street?

A. Its passenger trains ran into the Union Station. I have forgotten where the freight house was in those days.

"Int. 13. Then the facts are these: at one time there was a continuous line of railroad, built from 5th Street, in Des Moines, to Boone, Iowa, that by the letting of a contract, the St. Louis, Des Moines & Northern built that part of said road running from 11th Street to Boone, and that it ran its trains over said line, and thence on from 11th Street to 5th Street, and that leaves out who built that last link?

A. The St. Louis, Des Moines & Northern initial point was on 11th Street, but it did not contribute all the money that was expended west of 11th Street. The Wabash furnished most of the money to build the round house; furnished all the money to build the round house; which was west of 11th Street.

"Int. 14. Did the St. Louis, Des Moines & Northern with the exception just stated, build and operate the line referred to from 11th Street to Boone?

A. In conjunction with the Des Moines & St. Louis, it did.

312 "Int. 15. And it did operate its trains, running over said line continuously, from Boone to 5th Street?

A. Yes; during its existence it ran its trains to 5th Street.

"Int. 16. During what time did it exist and so operate?

A. I think it operated in that way until it was foreclosed.

"Int. 17. When did it begin? A. To operate?

"Int. 18. Yes?

A. My best recollection would be that it got into Boone, say, early in 1883.

"Int. 19. When was it foreclosed?

A. I don't remember.

"Int. 20. I mean, about when?

A. I couldn't imagine.

"Int. 21. About how long was it in existence as an operating road?

A. The records will show when it was foreclosed.

"Int. 22. I am trying to get simply a general idea, as to how long there was such a road operating—one year, two years, three years, or about what?

A. I should think that they operated the narrow gauge road four years; it may have been more, it may have been less.

"Int. 23. About when did they begin to build the line between 11th Street and Boone? A. In 1881.

"Int. 24. And they finished building, you think, about the year, 1883, getting into Boone?

A. Yes, I think it was early in 1883; it may have been in the last part of 1882.

"Int. 25. Who constructed the continuation of this line just referred to, to-wit; that part of it between 5th Street and 11th Street, in Des Moines?

A. My judgment would be that the Des Moines & St. Louis constructed that road, and somebody put a third rail
313 on the ties to accommodate both roads.

"Int. 26. Did this line, built and operated by the St. Louis, Des Moines & Northern, with the initial point at 11th Street, and terminating at Boone, cross Farnham Street, or 16th Street in Des Moines? A. Yes."

Now, were those questions asked you in that deposition and did you give those answers?

A. Those questions were asked and upon hearing the answers I find that many of them are not accurate and I believe that on cross-examination it was all straightened out. After having been informed that those interrogatories were made and answered in the deposition that was not used on the trial of the case I am satisfied that upon the trial of the suit in court that my answers are correct, having had more time to examine it and to learn what the facts were.

551X. Q. Those interrogatories were asked you and you did give the answers when your deposition was taken before Mr. Blaize and before the trial began? A. Yes.

552X. Q. Now, in the trial of that case and in open court did you also testify as a witness? A. I did.

553X. Q. And on that occasion were you asked the following questions by Mr. Vroman and did you give the following answers:

"Q. That is all we care to know. That closes the transaction. Now, where did the Narrow Gauge Railway Construction Co. commence to build the line of the St. Louis, Des Moines & Northern Railway Co.?

A. On Lots 1 and 2, Block 2, Hoxie's Addition.

"Q. That does not mean anything to me. Where would it be with reference to streets?

314 A. It would be at the corner of Vine and Eleventh Streets.

"Q. Now as I understand this, Vine and Eleventh Street is east of Farnham Street? A. Yes.

"Q. How many streets east? A. Five.

"Q. This road, as I understand was a narrow gauge construction? A. Yes.

"Q. In its original building from initial point to destination? A. Yes.

"Q. It was narrow gauge from the point where you started first to work east and then to Boone, the other branch, all narrow gauge? A. Yes.

"Q. When you started at Eleventh Street, as we call it, which way did you build? A. West.

"Q. I speak of you, meaning the Narrow Gauge Construction Co., you built west? A. Yes.

"Q. What line—when did you commence that work? When did the company commence that work?

A. I think we commenced in 1881.

"Q. Do you know what time of the year?

A. No, I do not know that I do without hunting it up.

"Q. It was early in the spring, was it not?

A. I think so.

"Q. When did you finish the road to Waukee or when was the road finished to Waukee? A. I could not answer.

"Q. Was it finished that same season?

A. It was finished either in 1881 or 1882, and I do not know which.

"Q. It was finished, was it not, before the conveyance of the one half interest in it to the Northwestern—the Des Moines, Northwestern?

315 A. Well, I don't know really whether it was finished before or after.

"Q. The road was finished to Clive before the conveyance of the one-half interest to the Des Moines Northwestern, was it not? A. I cannot tell about those dates.

"Q. Under your contract, under the contract of the Narrow Gauge Company with the Des Moines Northwestern, it built no part of the road between Des Moines and Clive?

A. It did not.

"Q. So that what road was built between Des Moines and Clive at that time was the road of the St. Louis Des Moines & Northern? A. It was built under that name."

Were those questions asked and those answers given by you on that trial? A. Yes.

Defendants agree to furnish plaintiffs a map showing the line of the Des Moines Terminal Company and will also show on the map the Des Moines Union Railway Company's land that was conveyed to or condemned by the Des Moines & St. Louis Railroad Co. and the Des Moines, St. Louis & Northern, the complainants to furnish the defendants information as to such conveyances and condemnations which they desire to have placed on the map, and when the map is made it can be put in evidence if desired.

554X. Q. You and your son F. C. own all of the stock of the Des Moines Terminal Company, do you not?

A. I own some of the stock individually and the remainder belongs to the corporation F. M. Hubbell, Son & Co. Incorporated.

555X. Q. Who owns the stock of this corporation?

A. The stock of the F. M. Hubbell, Son & Co. Incorporated is owned one third by H. D. Thompson, one third by F. 316 C. Hubbell, and one third by trustee of the Frederick M. Hubbell estate.

556X. Q. When was that company, the F. M. Hubbell, Son & Co. Incorporated, incorporated, about what time?

A. I could only guess at it, I think six or seven years ago.

557X. Q. And before that company was formed you owned the stock individually of the Terminal Company?

A. I don't know whether the Terminal Company was organized or incorporated after the F. M. Hubbell, Son & Co. Incorporated was formed or before, I don't know which precedes the other.

558X. Q. Is not that corporation, the F. M. Hubbell Son & Co. Incorporated, merely a corporation to own and control your estate? A. No, it is not.

559X. Q. How did Mr. Thompson acquire his stock, that is your brother-in-law? A. In what company?

560X. Q. In F. M. Hubbell & Son, & Co. Incorporated?

A. Paid for it, bought it.

561X. Q. You and your son have in your possession and have always had in your possession and under your control and have so had for several years all the corporation record books of the Des Moines, Northern & Western Railway Co., and its predecessors, except the corporation record of the Des Moines & Northern Railway Co., have you not?

A. Yes.

562X. Q. And you still have all those records in your possession? A. Yes.

By Mr. Minnis:

563X. Q. How many terminal companies are there that you are interested in? A. Three.

564X. Q. What are the names of those companies?

A. The Des Moines Union Railway Co., the Des Moines Terminal Co. and the Des Moines Western Railway Co.

317 Mr. Guernsey: I think the record ought to show that this so-called cross-examination of Mr. Hubbell is an examination of Mr. Hubbell as a witness for complainants, because about nine-tenths of it has been new matter not covered by the direct examination or referred to. I have no objection to your putting him on the stand and making him a witness, and I think you ought to do it, not do it under the guise of cross-examination.

Mr. Minnis: We contend under the rules of court that when you put Mr. Hubbell on the stand that we are entitled to interrogate him on any subject in regard to this case on cross-examination as your witness. I may be mistaken about that, but it is a question of law whether we have or not.

Mr. Cook: Will you also furnish us a map of the terminal company known as the Des Moines & Western?

Mr. Guernsey: Yes, we will furnish you a map of that.

By Mr. Cook:

565X. Q. You omitted the Des Moines Terminal Co. and the Des Moines & Western Co., did you not? A. Yes.

Redirect Examination

By Mr. Guernsey:

357. Q. In the first place about this deposition of December 1st, 1909, where you were examined by Mr. Salinger, it appears that you were duly sworn on the part of the plaintiff, examined by Mr. Salinger immediately preceding the part of the testimony read by Mr. Cook. Mr. Salinger was one of the attorneys for the plaintiff in that case, was he not?

A. Yes.

358. Q. Those transactions were transactions that occurred in 1881 and 1882 about which he asked you on the 31st of December 1909? A. Yes.

359. Q. Had he indicated to you anything about the scope of your examination or had he given you any opportunity to refresh your recollection as to any matters about which he inquired of you before the questions were asked of you?

A. He had not.

360. Q. The deposition in fact was not used, was it?

A. It was not.

361. Q. That was a sort of fishing expedition undertaken by Mr. Salinger and was abandoned later?

Complainants' counsel objects to the question as calling for the conclusion of the witness.

A. I think it was.

362. Q. Now I want to ask you whether following the testimony read by Judge Cook you did not testify as follows, and I will read this into the record:

"Int. 27. The St. Louis, Des Moines & Northern ultimately lost its property by foreclosure and sale? A. Yes.

"Int. 28. Who became the owner?

A. The Des Moines & Northern Railway Company was the successor of the St. Louis, Des Moines & Northern Railroad Company.

"Int. 29. And from where to where did it operate?

A. I think it operated just the same as its predecessor.

"Int. 30. From Fifth Street to Boone?

A. Yes. I am under the impression there was a third rail laid across the Des Moines River, down to the Packing house, although I cannot now remember.

319 "Int. 31. At any rate, whether it operated more than its predecessor had or not, it did operate between Fifth Street to Boone? A. It did.

"Int. 32. How long did the Des Moines & Northern Railway Company continue to operate, about how long?

A. Well, I couldn't say. It operated under that name until it was merged with what we call the Fonda line.

"Int. 33. And when do you think was that?

A. I should think, that would be in the fall of 1891, or spring of 1892.

"Int. 34. The merger did not affect the road between Des Moines and Clive at all; both merged and unmerged, the trains were run over the same track, between Des Moines and Clive?

A. There was only one track between Des Moines and Clive; all the roads, the Fonda line, and the Boone line, and the merged line, all used the same track.

"Int. 35. And that was a line beginning at Fifth Street, in Des Moines, crossing Farnham Street, going to Clive, and ultimately from there to Boone, and to Fonda, respectively?

A. The Fonda line was a narrow gauge road and it operated from the Union Station to Fonda, and the Boone line operated from the Union Station to Boone.

"Int. 36. And both operations included the running of trains from Fifth Street in Des Moines, across Farnham Street, and to Clive? A. Yes.

"Int. 37. The Des Moines Northern Railway Company, that is the Boone line, is it? A. Yes.

"Int. 38. And the Des Moines & Northwestern Railway Company, that is the Fonda line? A. Yes.

"Int. 39. And they became one road by merger, about 320 the year, 1892, did they?

A. That would be my recollection.

"Int. 40. And what was the name of the Consolidated Company created by the merger of the Des Moines Northern and the Des Moines Northwestern Railway Companies?

A. The new road was called the Des Moines Northern & Western Railway Company.

"Int. 41. What did the Des Moines Northern & Western Railway Company operate?

A. The Des Moines Northern & Western Railway Company was a standard gauge road, and operated into East Des Moines, to the packing houses and to any other industries over there.

"Int. 42. What is the fact, about its operating the same line that the St. Louis, Des Moines & Northern Railway Company had operated over, to-wit; from Fifth Street, Des Moines, across Farnham Street, and by way of Clive to Boone?

A. It operated its passenger trains from Fifth Street to Boone.

"Int. 43. By way of Farnham Street and Clive?

A. Yes.

"Int. 44. How long did the Des Moines Northern & Western Railway Company remain in existence and so operated, or about how long?

A. Until about 1895, I should think.

"Int. 45. Who became its successor?

A. The Des Moines Northern & Western Railroad Company.

"Int. 46. Did the Des Moines Northern & Western Railroad Company also operate the said line from Fifth Street, Des Moines, by way of Farnham Street and Clive, to Boone?

A. Yes.

"Int. 47. And to Fonda? A. Yes.

"Int. 48. How long did it remain in existence and so operate?

A. I think up to the time that it sold its property to
321 the C. M. & St. Paul Railway Company.

"Int. 49. That was about the year 1899?

A. Yes, I think so.

"Int. 50. Then, if I understand you correctly, Mr. Hubbell, the St. Louis, Des Moines & Northern Railway Company constructed and operated a line of railroad from 11th Street, by way of Farnham Street and Clive to Boone, and in connection therewith ran its trains over said line, and on from 11th Street to 5th Street, and that the various other railroad companies referred to in your deposition, successively, for the time stated by you, continuously operated the same railroad; there was no gap in operation, was there?

A. That is a long question.

"(Int. 50 repeated.)

A. There was no gap in operation, but the St. Louis, Des Moines & Northern did not contribute all the money that was used in constructing the St. Louis, Des Moines & Northern Railway, from 11th Street to Boone.

"Int. 51. Yes, that is in your deposition already. The point I wish to make clear now is, first, that the St. Louis, Des Moines & Northern Railway Company, though it did not furnish all the money required for construction, constructed a line of railroad from 11th Street, in Des Moines, by way of Farnham Street and Clive, to Boone, and operated it, is that true?

A. The St. Louis, Des Moines & Northern road was constructed by the Narrow Gauge Railway Construction Company, and General G. M. Dodge, contributed that part of the money that he was credited with by the Wabash when they came to settle their accounts for the construction of the road
from 28th Street east to Eleventh Street.

322 "Int. 52. That does not answer my question. (Int. 51 read to witness.)

A. A road was constructed by the Narrow Gauge Railway Construction Company and turned over to General Dodge. I suppose General Dodge turned it over to the St. Louis, Des Moines & Northern.

"Int. 53. And they then operated it from Eleventh Street, by way of Farnham Street and Clive to Boone? A. Yes.

"Int. 54. And in connection therewith ran their trains on from Eleventh Street to Fifth Street?

A. Yes, and I think across the River; they had the right to use all the Des Moines Union property.

"Int. 55. And the various succeeding railroads you have named in your deposition, also operated said railroad, from Eleventh Street, by way of Farnham Street and Olive, to Boone? A. Yes.

"Int. 56. And later to Fonda? A. Yes.

"Int. 57. And that operation was continuous, was it? A. Yes."

Did you testify as I have read here in connection with your direct examination in the deposition referred to?

A. I did.

363. Q. I want to call your attention to the cross-examination and ask you if you testified in your cross-examination at that time as stated here.

"C-Int. 1. You said you lived here continuously since 1861?

A. Yes.

"C-Int. 2. You were here prior to that time? A. Yes.

"C-Int. 3. And then left for a while and came back?

A. I came here in 1855 and left in 1856 and returned 323 in 1861.

"C-Int. 4. What is your age now, Mr. Hubbell?

A. Almost seventy-one.

"C-Int. 5. Now you have spoken about the construction of the St. Louis, Des Moines and Northern, or it has been referred to in the questions, sometimes, as being constructed by the St. Louis, Des Moines and Northern, and sometimes, built or constructed by the Construction Company, and the distinction has not been very accurately maintained in your direct examination; as a matter of fact this was built by the Narrow Gauge Construction Company?

A. It was built by the Narrow Gauge Railway Construction Company contractor.

"C-Int. 6. Was that Narrow Gauge Railway Construction Company a corporation?

A. Yes, I think it was, I think it was a corporation.

"C-Int. 7. Now, then, where did the construction of this line commence, where in Des Moines did the construction of this line which we call the Boone line, by the Narrow Gauge Railway Construction Company, commence?

A. It commenced on Eleventh Street, on Lots 1 and 2, Block 22, Hoxie's Addition.

"C-Int. 8. That is West Eleventh Street?

A. West Eleventh Street.

"C-Int. 9. What is the fact as to whether the Construction Company built it all the way to Boone, if you remember?

A. In side of the corporation of the city of Des Moines the Des Moines & St. Louis paid part of the money.

"C-Int. 10. I am not asking who paid the money, I am just asking who built it?

224 A. The Narrow Gauge, part of it, was built by the Narrow Gauge Railway Construction Company.

"C-Int. 11. That is from Eleventh Street to Boone?

A. Yes.

"C-Int. 12. Now you referred to the Fonda line, the Des Moines Northwestern as built by the Wabash, what is the fact whether that line was built by the Wabash or by this Construction Company under a contract with the Wabash?

A. That part of it east of Waukee was built by the Narrow Gauge Railway Construction Company; money advanced originally, I think, by General Dodge, and then it was conveyed to the Des Moines Northwestern.

"C-Int. 16. Now, you talked about the operation to Fifth Street; what do you mean by operation?

A. I mean that the two narrow gauge companies ran their passenger trains to the Fifth Street depot.

"C-Int. 17. That was the passenger station in Des Moines of the Des Moines Union Railway Company? A. Yes.

"C-Int. 18. And during all of this period from the time of the commencement of the operation of these narrow gauge roads, down to the acquisition of the Des Moines Northern and Western Railroad Company by the plaintiff, the Milwaukee, these passenger trains of both of these lines, the Fonda line and Boone line, were operated into this Union Station?

A. Yes.

"C-Int. 19. And since that acquisition, the passenger trains of the Milwaukee Company have been operated into that Union Station? A. Yes.

"C-Int. 20. These trains that you have referred to that were operated into the Union Station were passenger
225 trains? A. Yes.

"C-Int. 21. Now, I think you said something about the operation of this property for freight purposes; in the early days did the Des Moines Union do the switching for these other companies or did they do their own switching, do you remember?

A. In the early days I think each company did its own switching.

"C-Int. 22. Then when you come to freight purposes, what is the fact as to whether each company used the entire terminal property, just as it used the property up to the Union Station for its passenger business?

A. Yes, each company occupied all the terminal property, and in the early days transacted all of their freight business on the southeast corner of Seventh and Cherry Streets.

"C-Int. 23. Now, that southeast corner, Seventh and Cherry Street, was where the freight house was? A. Yes.

"C-Int. 24. There was carload freight went to various places in the city which did not go to the freight house?

A. Yes, the car load freight was switched wherever it was wanted, but that that was unloaded, was unloaded in the freight house at the corner of Seventh and Cherry.

"C-Int. 25. Now, you talked about the Boone line and these other lines from the west here operating continuously to the Union Station; I wish you would state whether during that same period the Des Moines and St. Louis operated to the Union Station with its passenger trains in the same way?

A. It did.

"C-Int. 26. State whether or not during that same period it operated the track west of the Union Station to your west lead? A. Yes.

326 "C-Int. 27. What I was getting at, was the sense in which you used that word "operated;" by that you mean operated their trains over these tracks?

A. They ran their train over the tracks to accommodate their business. I remember particularly the Des Moines and St. Louis brought in car loads of coal to supply the Water Works, and switched it in themselves, in the early days.

"C-Int. 28. Now, what is the fact as to whether the continuous line over which the Boone line and Fonda line operated in the sense you used the word operated, terminated at the passenger station or went east of that for freight business?

A. The Fonda line and the Boone line had a right to go east of the Des Moines river as far as we had narrow gauge tracks. I don't remember about the narrow gauge tracks on the east side of the river.

"C-Int. 29. Do you remember whether they operated as far east as the packing house; whether there was a narrow gauge track down there or not?

A. That is my recollection, but there are others that can testify definitely.

"C-Int. 30. Your recollection is not clear?

A. No. It is my recollection we had tracks to the packing house and used to take hogs to the packing house, and I think we used to take corn to the distillery, there was a distillery there during those days.

"C-Int. 31. Now, you were connected with this Narrow Gauge Railway Construction Company, were you not?

A. Yes.

"C-Int. 32. And from whom did the Narrow Gauge Railway Construction Company receive the funds for the building of the road from Eleventh Street to the west city limits, 28th Street?

A. Part of it, from General Dodge, and part of it
327 from The Wabash, St. Louis & Pacific, originally.

"C-Int. 33. The Boone line was a narrow gauge line?

A. Yes.

"C-Int. 34. The Des Moines, St. Louis, we have referred to, came in from the east and was a broad gauge? A. Yes.

"C-Int. 35. Now, when it was built in, the parts of the property that were operated by both of these roads had to have a third rail? A. Yes.

"C-Int. 36. And who put in that third rail, west of the passenger station, as I understand it, you don't remember?

A. No.

"C-Int. 37. You don't remember whether it was done by the Des Moines Union, the Des Moines, St. Louis or the Boone line? A. I am satisfied—oh, I don't know.

"C-Int. 38. I mean who originally constructed it?

A. I don't know whether the Narrow Gauge got their rails down to Fifth Street and whether the Des Moines and St. Louis put on a third rail, or whether the Des Moines and St. Louis built into Des Moines first and permitted the St. Louis, Des Moines and Northern to put down its third rail; I don't know which got in first. The material to build the St. Louis, Des Moines and Northern was brought in, I think, mostly by the Rock Island and unloaded at Eleventh Street.

"C-Int. 39. You have given various dates here as to when these roads were organized and how long one operated and another; you have not refreshed your recollection as to those dates, that is, you didn't know what questions were going to be asked you here and did not have an opportunity to look it up? A. No.

228 "C-Int. 40. So that you do not know whether these are entirely accurate or not?

A. No, I couldn't testify that they were.

"C-Int. 41. What I want is this, to make clear, on these matters, you would have to rely on the record and not your recollection? A. Yes.

"C-Int. 42. Now, you spoke in connection with this merger, as I recollect it, of the two companies that took place late in 1891 or in the early part of 1892, as you recollect it now, as of the lines commencing at Fifth Street in Des Moines; did either of the constituent companies or the consolidated companies, so far as you know, ever claim any right of ownership to Fifth Street in Des Moines?

A. No that part on my answer in direct examination was erroneous, if I said they consolidated down to Fifth Street.

"C-Int. 43. Now, I notice in my notes here a reference to what the Des Moines, Northern and Western operated, and to what several of those roads operated here, referring to the operation to the packing houses and other industries and

operation to Fifth Street; now in what sense did you use the word 'operated' in connection with these questions and your answers?

A. I meant by that word 'operated' that the various railroad companies ran their trains wherever they pleased, over all of the Des Moines Union Railway Company's tracks."

You testified to that on cross-examination in connection with your deposition, did you? A. Yes.

Complainants' counsel offers from the record of the testimony in the trial of the case in the state court the following from the testimony of F. M. Hubbell.

329 "I feel confident that the Des Moines Northwestern was operated before the Des Moines & St. Louis, and that the Des Moines, St. Louis & Northern was the second one of the roads to be put in operation and that the Des Moines & St. Louis was the third; they all operated their trains to the depot.

By Mr. Cook:

566X. Q. Is it not the fact that the Des Moines Northwestern began to operate its trains to the depot as soon as the Narrow Gauge Road was constructed to Waukee? A. Yes.

567X. Q. And that the St. Louis, Des Moines & Northern began to operate this road from Fifth Street to Clive and northwestwardly sometime in the fall of 1881, or the early part of the year 1882?

A. The St. Louis, Des Moines & Northern was completed to Boone August 8th, 1882, and was operated from that time into Des Moines.

568X. Q. To Fifth Street?

A. They ran into the Union Station.

569X. Q. Those two railroads were narrow gauge railroads? A. Yes.

570X. Q. Now the bridge across the Des Moines River for the standard gauge road that came in from Albia was completed sometime in 1882, was it not?

A. Either late in 1882 or early in 1883.

571X. Q. And when that was completed, then that line was also operated from Albia up to the Union Station at Fifth Street?

A. The Wabash operated that line up to the Union Station.

572X. Q. And it operated its trains on beyond to the yard at the Water Works? A. Yes.

573X. Q. Some of the trains that ran into the Union Station were taken up to those yards, is that right?

A. That is right.

574X. Q. The freight trains ran up to the yards also?

A. Yes.

330 575X. Q. And it before 1888 switched its freight cars all over the Des Moines Union?

A. Yes, up until May 1st, 1888.

576X. Q. All three railroads did that until May 1st, 1888?

A. Yes, there were not three roads there were only two.

577X. Q. At the latter end?

A. The Wabash operated the Des Moines & St. Louis, and the Des Moines Northwestern under a lease.

578X. Q. I mean the three lines?

A. They were all operated to the Union Station, did their own work up to May 1st, 1888.

579X. Q. You said the road from the east was standard gauge? A. Yes.

By Mr. Guernsey:

364. Q. Your attention was called to Exhibit 3 to the answer which was verified by you, and to some errors that appeared in it, for instance it is stated in the petition that terminal property had been mortgaged by the Des Moines & St. Louis Railway Co. to secure some bonds issued by the Wabash, St. Louis & Pacific Railway Co., that was an error, was it not? A. It was.

365. Q. You were not conscious that there were any erroneous statements in the petition at the time you verified it, were you? A. I was not.

366. Q. It was prepared by Mr. Cummins, was it not?

A. It was.

367. Q. The matter in controversy was the interpretation of your contract in 1886 and 1887 with the Purchasing Committee, was it not? A. It was.

368. Q. And the statement of these other things was introductory? A. Yes.

Complainants' counsel object to the examination as being cross-examination of the defendants' witness and because it is leading and calls for the conclusion of the witness.

Defendants' counsel states that he claims the right to cross-examine the witness as to matters which constitute about nine-tenths of the cross-examination as to which complainants have made the witness their own witness.

369. Q. Now a good many times you were asked by Col. Blodgett as to some allegations in Paragraph 28 of the answer, stating that F. M. Hubbell & Son purchased the stock of the Des Moines Union now owned by them, that you pur-

chased the stock from the Purchasing Committee upon reliance upon the fact that the Des Moines Union was the owner of the property in controversy and you were asked to specify the various things that you relied on. Now, at the time that these transactions occurred what is the fact as to whether or not you were familiar with the provisions of article II of the original articles of incorporation of the Des Moines Union Railway Co., which was assented to by all of the parties, which stated the general nature of the business to be conducted by that company should be, among other things, the ownership and operation of railways in and about the city of Des Moines, including the construction, ownership and use of depots, freight houses, railway shops &c.?

A. Yes, I knew about the articles of incorporation.

370. Q. Now in the recitals that precede Article I of its articles, it is recited that the contract of 1882, provided that a depot company might be organized to take permanent charge of the property, and it recites in addition to that that it was the understanding of the parties that such company might acquire, operate and maintain this property; do you remember whether you had seen that, or not?

A. Yes.

371. Q. Now then you knew prior to these transactions, didn't you, that article II of the original articles of incorporation of the company provided that its capital stock should be the sum of \$1,000,000., and that the Board of Directors were authorized to receive in payment for it the property and franchises in the City of Des Moines then held by the Des Moines & St. Louis Railroad Co., the Des Moines Northwestern Railway Co., the St. Louis, Des Moines & Northern Railway Co., James F. How, Trustee, James F. How, and Greenville M. Dodge? A. I did.

372. Q. You knew at that time, didn't you, that the contract of 1882 provided that the expense incurred in the purchase of this property should be borne one half by the Des Moines & St. Louis Railroad Co. and one fourth each by the Des Moines Northwestern Railway Co. and the St. Louis Des Moines & Northern Railway Co., and they had in fact, had they not, paid the money that was to entitle them to the use of the property? A. No, they had not.

373. Q. I didn't ask you whether they had or not, I asked you if you knew it or not up to the time?

A. I knew they had not.

374. Q. And you knew, did you not, at these times and when the auditing department of the Wabash Co. furnished this statement that you have identified, showing the amount of money the Wabash had in the terminal property and the amount Gen. Dodge had in the company, that they had advanced all the money paid for the property, didn't you?

A. Yes, I knew that.

333 375. Q. Now, you knew prior to the time of your making your first purchase in 1890 that the Des Moines Northwestern Railway Co. had gone out of existence, so far as owning or operating any railroad was concerned, didn't you? A. Yes.

376. Q. You knew, didn't you, prior to making your first purchase in 1890, that the Des Moines & St. Louis Railroad Co. was not and had not been operating any railroad?

A. Yes, I knew that.

377. Q. You knew, didn't you, that the trust deed which was prepared in order to secure the issue of bonds, which were to be given to the Purchasing Committee and Gen. Dodge in part payment of this property, and which was prepared by Col. Blodgett, the general solicitor, then, I believe of the Wabash property, recited that the Des Moines Union Railway Co. was a corporation organized and existing under the laws of Iowa, for the purpose of locating, constructing, owning and operating a railway in and about the City of Des Moines, including the construction, ownership and use of depots, freight houses &c.?

Complainants' counsel object to this question and to these questions generally, because this question is leading and suggestive, and the questions generally are leading and suggestive.

378. Q. I will change the form of the question. The trust deed of the Des Moines Union Railway Co. which is dated November 1st, 1887, was prepared by whom?

A. Prepared by Col. Blodgett.

379. Q. What relation did he sustain to the Wabash Company at the time?

A. I understand he was general solicitor of the Wabash Roads.

334 380. Q. This deed is signed by you as secretary of the Des Moines Union Railway Co., and it recites among other things, this "The Des Moines, Union Railway Co. is a corporation duly organized and existing under the laws of the State of Iowa, and as such is fully authorized to locate, construct, own and operate a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight houses, railway shops, repair shops, stock yards and whatever may be useful and convenient for the operation of railways in said city, and the transfer of cars from the line and depots of one railway to another &c. * * * and for such purposes has full right to acquire by purchase and condemnation all such right of way &c. * * * as are necessary and proper for the operation and

construction of such line of railroad, and to provide itself with depot grounds, yards, shops and other terminal facilities adequate for handling the traffic to be transported upon such railroad;" you were familiar with this trust deed, were you not, prior to making the first purchase? A. Yes.

381. Q. Now, this recites further:

"Whereas, the Des Moines Union Railway Company has undertaken and partially completed the construction of a railroad in the City of Des Moines, Polk County, Iowa, extending from the main lines of the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company and the St. Louis Des Moines & Northern Railway Company to a connection with and across the lines of various other railroads which center or terminate in the said City of Des Moines, and to various manufactories and industries
335 in said City and has purchased and owns various structures and buildings used for depots, railway shops, round houses and other structures suitable and useful for railway purposes, and has purchased, acquired and owns by condemnation and otherwise, valuable real estate in said City;"

Now, in connection with the execution of these bonds and of this trust deed what is the fact as to whether you believed you had seen this recital in this trust deed?

A. I believe I had seen these recitals in the trust deed.

382. Q. Now, this trust deed recites further:

"Whereas, for the purpose of paying for the property aforesaid, aiding in the construction and extension of said railway, perfecting the title to said property, and completing all necessary and desirable improvements thereto and thereon, said party of the first part proposes to issue its bonds." You had some general information about that, hadn't you, prior to these matters? A. I had.

383. Q. You had been present, had you not, at the meeting of the directors of the Des Moines Union Railway Co. held on the 8th of November, 1887? A. Yes.

384. Q. Now this resolution says, "that the officers of the company on receipt of the deed referred to in the foregoing resolutions shall place the same on record, prepare mortgages on all of the property of this company, either owned or to be hereafter acquired;" was any mortgage prepared except the one to which you have been referred at any time on the Des Moines Union property? A. No.

336 385. Q. And this resolution provided further that the officers of the company were authorized on the execution of the mortgage to cause bonds to be prepared and executed in conformity with it, the amount required to be used

in payment for the property as provided in the foregoing resolution; you knew about this? A. Yes.

386. Q. Now, you knew that those bonds were in fact issued and delivered, did you not? A. Yes.

387. Q. Prior to any purchase of stock by you?

A. Yes.

388. Q. You knew, did you not, that at this same meeting provision was made for the purchase of a couple of lots from Polk & Hubbell and they were transferred to the company by an absolute title, and some of the same bonds issued to pay for them? A. Yes.

389. Q. You knew that other property was acquired from time to time, always by an unrestricted title? A. Yes.

390. Q. Had you seen a letter written by Mr. How to Messrs. Polk & Hubbell dated September 7th, 1888, in which he said among other things, that Mr. Ashley was satisfied that the Purchasing Committee would not approve of the surrender of any of the Des Moines stock without a consideration?

A. Yes.

391. Q. You had received a letter from Mr. How of April 1st, 1889, where he says, "I think the interest due on the deed of trust on the lots owned by the Terminal Company referred to in your letter should be paid, and an arrangement made to continue the deed of trust on the property at a lower rate of interest. Of course, the interest now due and to

397 become due should be paid by the Terminal Company."?

A. Yes, I received that letter.

392. Q. What lot was that?

A. I think that was the Heath property.

393. Q. The Heath property was not purchased as early as that, 1889, was not that the Hill property?

A. Yes, I think that was the trust deed held by M. L. P. Hill on the lot on which the Union Station was afterwards erected.

394. Q. And that property when conveyed to the Des Moines Union was subject to that trust deed? A. Yes.

395. Q. Who afterwards paid off the mortgage?

A. The Des Moines Union Railway Co. paid that mortgage.

396. Q. You also knew prior to buying any of this stock about the contract of 1889, did you not? A. I did.

397. Q. You know its recitations? A. Yes.

Mr. Guernsey: It is conceded that the mortgage referred to was paid out of surplus earnings.

398. Q. What was the fact as to whether or not you participated in those transactions? A. I did.

399. Q. Now, prior to the purchase of the stock and bonds, in February, 1890, what is the fact as to whether you had made the contract then by which the Purchasing Committee agreed to sell to Polk & Hubbell the Des Moines & Northwestern Railway based on your proposition of November 9th, 1886, and the contract of September 10th, 1887, and subsequent matters? A. I had.

400. Q. You were familiar with the provisions of that contract of 1887 to the effect that if the terminal property should be merged in a terminal company either before or after the transfer of the fourth interest as above the bonds and stock received from the terminal company in exchange for said one fourth interest should be transferred in lieu of the property to Messrs. Polk & Hubbell or their assigns? A. I was familiar with that.

401. Q. And what is the fact as to whether prior to the purchase of this stock and bonds in February, 1890, the Purchasing Committee had delivered under this contract of 1887, one-fourth of the stock and bonds of the Des Moines Union, as representing the fourth interest in that company?

A. Yes, the Purchasing Committee had delivered the 112 Des Moines Union bonds to me.

402. Q. Now then, when you bought this stock and bonds in 1890, February 5th, and in June, from the Purchasing Committee, did you think that stock was anything other and different so far as representing an interest in the terminal property than the stock you bought in 1887 from the same committee?

A. I did not know or think of any difference in the kind of stock.

403. Q. Did the committee or any member of the Purchasing Committee suggest to you in connection with the subsequent purchases that the stock did not mean or represent what it had meant and represented under the earlier purchases?

A. They did not.

404. Q. Now, are these matters that have been referred to here, some of the matters which you relied on and which led you to believe that the Des Moines Union Railway Co. owned this property? A. Yes.

405. Q. Can you, or do you attempt to specify everything that may have been in your mind at that time?

A. No, I could not.

406. Q. Now, you were asked by Col. Blodgett, several times, I think whether you thought that the proceedings on April 8th, 1890, affected the title of the Des Moines Union Railway Co. and I believe in response you said in each instance that you did not, that you always believed it acquired the title when the original purchase was made; now

what is the fact as to whether in 1890 you believed that the purpose of those proceedings was, as stated by Senator Cummins, in substance to straighten out the record and make the record conform to the facts?

A. That is the way I understood it.

407. Q. Now you were asked as to whether or not the Purchasing Committee made any representations as to the title, and you said they did not. The members of the Purchasing Committee were also familiar with all these transactions to which I have called your attention, were they not?

A. I think they were.

408. Q. And they knew you were familiar with them?

A. Yes.

409. Q. Now, your attention has been called to a letter that you wrote to Mr. Ashley on April 1st, 1890, asking about the terms upon which Mr. Ashley would sell a one-eighth interest in the capital stock of the Des Moines Union Railway Co.; this is addressed to O. D. Ashley, president, he was president of what?

A. Of the Wabash, St. Louis & Pacific or its successor.

410. Q. April 1st, 1890?

A. It was the Wabash Railroad Co. then.

411. Q. Now, did you write this letter asking upon what terms he would sell the one-eighth interest in stock with the idea that the company did not own any property and the stock had no value?

340. Complainants' counsel object to the question as calling for the conclusion and opinion of the witness and as a mere argument.

A. No, I did not.

412. Q. You purchased this stock from the Des Moines Northern & Western Co., or rather F. M. Hubbell & Son did, on January 25th, 1894? A. Yes.

413. Q. At that time the amended articles had been adopted and filed? A. Yes.

414. Q. And you were familiar with their provisions, were you not? A. Yes.

415. Q. Col. Blodgett asked you whether you could remember his ever having said to you, or your having seen a letter in which he said, that he approved of those amended articles, and you said you could not; I call your attention to the amended articles as signed, headed, "Amendments to articles of incorporation of Des Moines Union Railway Co." and this statement, "We, the officers of the Des Moines Union Railway Co., a corporation, existing under and by virtue of the laws of the State of Iowa, do hereby state that at a meeting of the stockholders of said corporation called and held on the 8th

day of April, 1890, for the purpose of amending the articles of incorporation, said stockholders do unanimously and duly adopt the following amendments to said articles of incorporation," and will ask you whether those amendments and that statement is signed by Wells H. Blodgett?

Complainants' counsel object to this as not the best evidence.

A. It is.

416. Q. And notwithstanding the fact that you have
341 never seen a letter of his approving those articles and do not recollect a personal conversation with him what is the fact as to whether you had seen those amendments and this statement that I have read signed by him prior to your purchase of this stock in February, 1894?

A. Yes, I had.

417. Q. Now this article, the third amended article, provided that 4,000 shares shall be issued of the capital stock of the company as a part of the purchase price of the terminal property originally acquired by the corporation, and then it provides that it shall be issued to the Purchasing Committee of the Wabash to the Des Moines & Northwestern and to the Des Moines & Northern; you were familiar with that were you not? A. Yes.

418. Q. You were familiar with the resolutions adopted at that meeting, were you not, prior to the purchase of this stock A. Yes.

419. Q. You knew that the representatives of all of the companies had attended that meeting, did you not?

Complainants' counsel object to the question as leading, suggestive and calling for a conclusion.

420. Q. You knew that J. F. How had attended that meeting, did you not? A. I did.

421. Q. What was his relation to the Wabash Co. at that time? A. Vice president.

422. Q. You knew that C. M. Hays had attended that meeting, did you not? A. Yes.

423. Q. What was his relation to the Wabash Co. at that time? A. He was general manager.

424. Q. You knew that you yourself had attended that meeting? A. Yes.

342 425. Q. And that you were president of the Des Moines & North Western Railway Co.? A. Yes.

426. Q. And you knew that your firm owned practically all, if not absolutely all of the stock of the company, didn't you? A. Yes.

427. Q. You knew that Mr. Martin was there, did you not?

A. I did.

428. Q. And you knew that Mr. Cummins was there, did you not? A. Yes.

429. Q. And you knew that Mr. Martin was at that time the manager for Gen. Dodge of the Des Moines & Northern?

A. He was general manager.

430. Q. And Mr. Cummins was vice president and counsel of that road? A. Yes.

431. Q. You knew that it was set out in that resolution, didn't you or was recited that the articles of incorporation had been amended so as to conform to the true intent of the several parties? A. Yes.

432. Q. You knew that it was recited in those resolutions that they were unanimously adopted in that meeting, that it was the agreement between all of the parties in interest that this property should be purchased at its fair value?

A. Yes.

433. Q. And that this was to be paid partly in bonds and partly in stock? A. Yes.

434. Q. Now, then knowing all these things what is the fact as to whether you did believe when you bought this stock from the Des Moines Northern & Western Railway Co. that the Des Moines Union Railway Co. was the owner of this property? A. I surely did.

343 435. Q. What is the fact as to whether or not the acts of these various parties at this meeting in the amendments of those articles, in the recognition by the recitals in the resolutions that the record did not correctly state the facts, in the adoption of those resolutions reciting the purchase of the property and providing for the payment of the balance of the purchase price, are some of the acts of the complainants or their predecessors, which you relied upon and refer to in your answer? A. They are.

436. Q. During the period from 1888 down to the present time, omitting now the original purchase, has the Des Moines Union Railway Co., so far as you know, purchased any piece of property without taking an absolute title to it, or a title subject to mortgage which was later paid off?

A. They have always taken an unencumbered title.

Complainants' counsel object to this answer and move to strike it out, because it states a mere conclusion and is not the best evidence.

437. Q. Now, as I understood you when Col. Blodgett was examining you, you said in your answer they always took an unencumbered title; the Heath property was encumbered when you took it?

A. We caused it to be encumbered, it was part of the agreement to purchase that it should be encumbered by J. Cummins and the Des Moines Union Co. would assure it.

438. Q. You said, as I understood you, in answer to Col. Blodgett, that prior to the meeting of April 8th, 1890, the contract of January 2nd, 1882, had been abandoned by the parties. In the first place I believe you have already said that the payment which was to be made for the property by the parties was never in fact made?

A. No, never was made.

344 439. Q. Now, then it was provided in the contract that the Des Moines & St. Louis Railroad Company should at all times be charged with the police control, supervision and maintenance of the property; did it ever after that control or ever maintain the property?

A. It did not.

440. Q. There was no provision in this contract for the operation of the property by any Terminal Company so far as I know. Did the Des Moines Union Railway Co. as soon as it acquired the property begin to operate it?

A. It did.

441. Q. Now Mr. Hubbell, I wish you would look at the record of the Des Moines & St. Louis Railroad Co. and state how many meetings of its stockholders or directors have been held since the year 1891, giving their dates?

A. From 1891 there was no meeting of the stockholders or directors until January 16th, 1897, when there was a meeting of the board of directors.

442. Q. And when was the next meeting?

A. January 25th, 1897, a special meeting of stockholders.

443. Q. When was the next meeting?

A. February 8th, 1897, a meeting of the board of directors.

444. Q. When was the next one?

A. January 5th, 1899, the annual meeting of stockholders.

445. Q. When was the next meeting?

A. February 3rd, 1899, stockholders' meeting.

446. Q. When was the next meeting?

A. March 16th, 1899, meeting of board of directors.

447. Q. Has there been any meeting since that meeting of March, 1899, as shown by this record? A. No.

At this point a recess was taken until 2 P. M. at which time the examination was resumed as follows:

345 448. Q. Now, Mr. Hubbell you were asked when you acquired this stock from the Des Moines Northern & Western in January, 1904, if you were not an officer and F. C. Hubbell was not an officer and Mr. Cummins was not the counsel &c.; I call your attention to page 3 of the record book

of that company showing a meeting held January 4th, 1894, from which I quote as follows, "F. C. Hubbell moved that the Board of Directors for 1893 viz. G. M. Dodge, F. M. Hubbell, F. C. Hubbell, L. M. Martin, A. B. Cummins, A. M. Denman, and H. D. Thompson be re-elected for the year 1894; motion being duly seconded, the following vote was had, F. M. Hubbell voted 15,000 shares, F. M. Hubbell & Son by F. M. Hubbell voted 14,977 shares, G. M. Dodge by his proxy L. M. Martin voted 5,000 shares, L. M. Martin voted 5,950 shares, A. B. Cummins voted 1,000 shares, W. D. Winfield by his proxy L. M. Martin voted 50 shares, A. M. Denman voted 1 share, F. C. Hubbell voted 1 share, H. D. Thompson voted 1 share, total 42,000 shares. The entire shares of stock having been voted for the persons nominated by F. C. Hubbell, they were declared unanimously elected as directors of the company for the ensuing year." Were the 42,000 shares there specified all the outstanding shares at that time and were they held as indicated by this extract from the record?

A. Those were all the shares and they were held as the record recites.

Complainants' counsel admit that the Des Moines Northern & Western Railway Co. was formally dissolved by a stockholders' meeting on January 2nd, 1896.

449. Q. Col. Blodgett asked you for your opinion as to whether the contract of May 10th, 1889, was a lease; is that the same contract that is referred to throughout the amended bill, until the words were by amendment stricken out by complainants as the contract in form a lease? A. It is.

450. Q. Now, you stated that the Des Moines & Northern, as I understood, was the owner of one-fourth of the stock of the Des Moines Union Railway Co., and that it became so by transfer from Gen Dodge; I wish you would state whether this stock had ever been issued to Gen. Dodge prior to April 8th, 1890, and if not, what you mean by saying it became so by transfer from Gen. Dodge?

A. It had not been theretofore issued to Gen. Dodge I suppose by his order or request.

451. Q. Col. Blodgett asked you about a notice of the meeting of the stockholders February 18th, 1890, and about its publication on the 15th and 18th days of January, 1890, as I recollect it; I wish you would look at the original record book and state whether the copy of the notice as it appears in the original record is a printed copy clipped from some newspaper and pasted into the record? A. It is.

452. Q. I believe you said you have been a member of the Iowa bar for a long time; have you been in active practice of the law all this time?

A. No, I have never tried a case; I was a member of the firm of Polk & Hubbell, Mr. Polk was a good lawyer but I never claimed to know any law except what I have absorbed from him.

453. Q. Referring to this strip of right of way that you said yesterday you donated, I wish you would look at this deed defendants' exhibit 562 in the stipulation of date May 31st, 1911, dated October 1st, 1895, signed by F. M. Hubbell and Frances E. Hubbell, by F. C. Hubbell her attorney in fact, recorded in book 438 at page 559 and state whether that is the conveyance of the piece of right of way in question to the Des Moines Union?

347 A. It is the same.

454. Q. You said that all of the deeds to the Des Moines Union were straight warranty deeds; I call your attention to Exhibits 20 and 21; was that statement of yours entirely correct?

A. It is not, Exhibit No. 20, deed of G. M. Dodge and wife to Des Moines Union Railway Co., is a quit-claim deed, and plaintiff's Exhibit No. 1, deed of St. Louis Des Moines & Northern Railway Co. to Des Moines Union Railway Co., is a quit-claim deed.

455. Q. You remember a deed the Wabash made in 1890, don't you? A. Yes.

456. Q. I have forgotten, my impression is that was not a warranty deed, do you remember?

A. I think it was a quit-claim deed. It was the conveyance of what we call the Sherman tract.

457. Q. Now then I want to go back to this contract with the Purchasing Committee under which the Des Moines Northwestern was acquired. You will remember that the agreement of September 10th, 1887, provided that one-fourth of the terminal property was to go to Polk & Hubbell, and if the corporation was organized they were to receive as representing this one fourth one-fourth of the stock of the Des Moines Union Railway Co. and one-fourth of the bonds; I also call your attention to a later contract, which is contained in the stipulation of May 31st, 1911, and commences, "Referring to a conditional contract dated October 9th, 1886, between Messrs. Polk & Hubbell of the one part, the Wabash Purchasing Committee so called of the other part," under which you purchased the bonds of the Des Moines & Northwestern Railway Co. which had been issued to the Purchasing Committee as a part of the purchase price of that property.

348 This last contract provided that you would pay and deliver to the Purchasing Committee when this agreement was signed the bonds of the Des Moines Union Railway Co. of the par value of \$115,000. What is the fact as to whether those bonds

were paid and delivered to the Purchasing Committee by you under the contract I have just referred to, as a part of what you paid them for these Des Moines & Northwestern bonds?

A. Yes, the 115 Des Moines Union bonds were paid by me to the Purchasing Committee in part payment for the Des Moines & Northwestern Co. bonds.

458. Q. What is the fact as to whether the \$112,000 bonds which under the contract of September 10th, 1887, the Purchasing Committee had turned over were a part of these \$115,000 that went back to it? A. Yes sir, they were.

459. Q. Now if you will refer to Exhibit No. 62, which is a deed made by Polk & Huddell to the Des Moines & Northwestern Railway Co. you will observe that it does not describe any stock or bonds of the Des Moines Union Railway Co.; I wish you would state first whether the Des Moines & Northwestern Railway Co. received any part of this \$112,000. of Des Moines Union Railway bonds which the Purchasing Committee sold under the contract that we have referred to of September 10th, 1887, under which the Des Moines & Northwestern Railway was purchased by Polk & Huddell?

A. No, it did not.

460. Q. State if you know whether at any time the Des Moines & Northwestern Railway Co., the St. Louis Des Moines & Northern Railway, the Des Moines & Northern Railway,

the Des Moines Northern & Western Railway Co., or the Des Moines Northwestern Railroad Co. owned any Des Moines Union Railway bonds?

A. No, they did not.

461. Q. F. C. Huddell says he thinks the Des Moines Northwestern Co. owned a few some time; did the company last named acquire some bonds on account of advances made to the Des Moines Union for which the Des Moines Union reimbursed it by bonds?

A. Yes, I think the Des Moines Northern & Western Railway Co. did get some Des Moines Union bonds to reimburse it for money advanced to the Des Moines Union Railway Co. to buy property and make improvements here in the City.

462. Q. Did either of the companies have any of the Des Moines Union Railway Co. bonds at any time except those acquired in that way, that is to reimburse them for money which they had advanced for the Des Moines Union property or additions to it? A. No.

463. Q. You will observe that this deed from Polk & Huddell to the Des Moines & Northwestern Railway Co. does not purport to cover any Des Moines Union stock; how did the Des Moines & Northwestern Railway Co. acquire the one-fourth of the stock in the Des Moines Union Railway Co. which was issued to the Des Moines Northwestern Railway Co. April 8th, 1890? A. By donation from me.

464. Q. You directed the issuance of the stock to that company? A. I did.

465. Q. I call your attention to the following record of the stockholders' meeting, November 1st, 1887, of the Des Moines Union Railway Co. "And it further appearing that the stock held by A. A. Talmage, he having deceased, 350 had been assigned by his executrix Mary R. R. Talmage to James How;" I wish you would state whether the paper I now hand you is the original assignment of that Talmage stock? A. Yes it is.

466. Q. Will you please read this to the examiner so that he may take it as part of your testimony.

A. (Reading) "I, Mary R. Talmage, executrix of the last will and testament of Archibald A. Talmage, deceased, do hereby sell, assign, transfer and set over to James F. How, the one share of capital stock of the Des Moines Union Railway Co. standing in the name of my said decedent on the books of the said company. Witness my hand and seal this 20th day of 1887. Mary R. Talmage"; at the left hand it says, "Signed, sealed and delivered in the presence of Henry A. Lloyd."

467. Q. After Mrs. Talmage's name there is a scroll indicating a seal? A. Yes.

468. Q. Now I will ask you to state whether the paper I now hand you is a proxy signed by G. M. Dodge, authorizing C. F. Meek, to appear at the annual meeting of the stockholders of the Des Moines Union Railway Co. June 6th, 1887, as his proxy? A. It is.

469. Q. Now, I will ask you whether the papers I now hand you are proxies signed by James F. How and A. L. Hopkins, for a stockholders' meeting, of the Des Moines Union for October 1887?

A. Yes, James F. How's was to J. S. Polk, October 27th, 1887.

470. Q. Is the paper I now hand you a like proxy signed by G. M. Dodge? A. Yes.

470. Q. If the three proxies are in the same form, will you please read one of them to the examiner so we may have it in the record?

A. (Reading): "Know all men by these presents: 351 That I a stockholder in the Des Moines Union Railway Co. and owning two shares of the capital stock of said company, do hereby constitute and appoint, J. S. Polk, of Des Moines, Iowa my lawful agent and attorney, for me and in my name to appear at a meeting of the stockholders of the said company to be held at the office of the company in Des Moines Iowa, between the hours of 10 o'clock A. M. and 4 o'clock P. M. of the 1st day of November, 1887

for the purpose of amending article II of the articles of incorporation of this company so as to increase the capital stock of the company to \$2,000,000., and considering the question of issuing \$1,000,000. of bonds of the company secured by mortgage on its property, to pay for constructing and improving said railway and property, and for the transaction of any other business coming before said meeting or at an adjournment thereof, and then and there for me and in my name to cast the vote to which I am entitled as a stockholder and which I might cast if present. Witness my hand this 27th day of October, 1887. James F. How. Witness William R. Glading."

471. Q. I wish you would look at the paper I now hand you and state whether or not this is a proxy signed by the Purchasing Committee and James F. How authorizing Charles M. Hays to vote as their proxy at the annual stockholders' meeting of the Des Moines Union Railway Co., January 6th, 1893? A. It is.

472. Q. By whom was that witnessed?

A. Witnessed by J. C. Otteson.

473. Q. He was at that time secretary of the Wabash Co.? A. Yes.

352 473. Q. Will you read that into the record?

A. (Reading) "Know all men by these presents, that we, the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Co. and J. F. How do hereby constitute and appoint Charles M. Hays, attorney and agent for me and in my name, place and stead to vote as my proxy at the annual meeting of the stockholders of the Des Moines Union Railway Co. to be held in Des Moines, Iowa, January 6th, 1893, according to the number of votes we should be entitled to cast if there personally present. In witness whereof, I have hereunto set my hand and seal this day of 18.., Purchasing Committee, by O. D. Ashley, Secretary. Seal. James F. How, Seal. Sealed and delivered, in presence of J. C. Otteson."

474. Q. Now, I wish you would turn to the record of the meeting of the Des Moines Union Railway Co. January 6th, 1893, and state whether or not the record shows that the Purchasing Committee's stock was represented at that meeting by Charles M. Hays, its proxy? A. It was.

475. Q. How many shares? A. 498 shares.

476. Q. I wish you would state if that is a part of the stock that was issued April 8th, 1890 under the proceedings had that day? A. It is.

477. Q. Will you look at the paper I now hand you and state what it is?

A. It is a proxy to Charles M. Hays for the annual meeting of stockholders of the Des Moines Union Railway Co. to be held January 5th, 1894.

478. Q. Will you please read it?

A. (Reading) Know all men by these presents, That James F. Joy, T. H. Hubbard, Edgar T. Welles, O. D. Ashley, Purchasing Committee Trustees, stockholders in the Des Moines Union Railway Co., owners of 498 shares, have made,
 353 constituted and appointed Charles M. Hays of St. Louis, Mo. lawful agent and attorney for us, and in our names to appear at the annual meeting of stockholders of said company to be held in the City of Des Moines, Iowa, on the 25th day of January, A. D. 1894, for the transaction of any business which may come before said meeting or at any adjournment thereof, and then and there for us and in our names to cast the vote to which we are entitled as stockholders and which we might cast if present. Witness our hands and seals this 19th day of January, 1894. James F. Joy, T. H. Hubbard, Edgar T. Welles, O. D. Ashley, Purchasing Committee Trustees, Seal by O. D. Ashley Secretary. Witness J. C. Otteson.

479. Q. I wish you would look at the record of the meeting of the Des Moines Union Railway Company held January 25th, 1894, and state whether Mr. Hays, under this proxy was present at this meeting, and voted 498 shares of stock?

A. He was present and voted 498 shares of stock.

480. Q. And is that the same stock issued under the resolution of April 8th, 1890? A. It is, the same stock.

481. Q. What is the paper I now hand you?

A. It is a proxy from the Purchasing Committee to Charles M. Hays.

482. Q. Will you please read it?

A. Reading: Know all men by these presents, That we, James F. Joy, Thomas H. Hubbard, Ossian D. Ashley, and Edgar T. Welles, Purchasing Committee Trustees, do hereby constitute and appoint Charles M. Hays attorney or agent for us and in our names to vote as our proxy at the annual meeting of the stockholders of the Des Moines Union Railway Co. to be held at Des Moines, Iowa, on Wednesday, January 30th, 1895, and we do hereby authorize the person
 354 above named to vote as our proxy at said meeting, or any adjournment thereof, according to the number of votes we should be entitled to vote, if there personally present. In witness whereof we have hereunto set our hands and seals this 25th day of January, 1895. James F. Joy, T. H. Hubbard, Edgar T. Welles, O. D. Ashley, Purchasing Committee Trustees, with seal. O. D. Ashley, secretary, sealed and delivered in the presence of J. C. Otteson."

483. Q. I hand you herewith two papers and I wish you would state what they are?

A. They are both proxies to vote at the annual meeting of stockholders of the Des Moines Union Railway Co.

484. Q. For what year?

A. The stockholders' meeting of January 6th, 1898.

485. Q. I wish you would look at the letter I now hand you and ask you if that is the letter which enclosed these proxies to you? A. It is.

486. Q. Will you read this letter, if you please?

A. (Reading) "New York, January 3rd, 1898. F. M. Hubbell, Esq., secretary Des Moines Union Railway, Des Moines, Iowa. Dear Sir: At the request of Mr. Ramsey, I enclose herewith two proxies executed by the Wabash Purchasing Committee for the Des Moines Union annual meeting to be held on the 6th. Yours truly, J. C. Otteson, Secretary."

487. Q. The same Mr. Otteson, secretary of the Wabash Company? A. Yes.

488. Q. Will you read one of the proxies, I think they are identical in form?

A. (Reading): "Know all men by these presents: That we, O. D. Ashley, Edgar T. Welles and T. H. Hubbard
355 Purchasing Committee Trustees, hereby constitute and appoint our attorney to vote as our proxy according to the number of votes we should be entitled to vote if personally present at the annual meeting of the stockholders of the Des Moines Union Railway Co. to be held at the office of said company in Des Moines, Iowa, on the 6th day of January, 1898, and at any adjournment or adjournments thereof; and we hereby empower and authorize our said attorney to vote for us and in our name, place and stead for directors of said company, and also to vote and act on any other business which may be brought before said annual meeting or any adjournment or adjournments thereof, and generally in our name and stead to vote and act in the premises as completely and effectually as we could do if personally present and to act hereby revoking any proxy heretofore given. In witness whereof, we have hereunto set our hand this 1st day of December, 1897. O. D. Ashley, Edgar T. Welles, Thomas H. Hubbard. Signed in the presence of J. C. Otteson, as to O. D. Ashley, Edgar T. Welles, and T. H. Hubbard;" they are both alike?

A. Both exactly alike.

489. Q. I wish you would look at the record of the stockholders' meeting of January 6th, 1898, of the Des Moines Union Railway Co. and state whether that stock was voted under that proxy and by whom?

A. Voted by F. M. Hubbell, as proxy for the Purchasing Committee.

490. Q. Now generally, I wish you would state whether since April 8th, 1890, at the meetings of the stockholders of the Des Moines Union Railway Co. the stock in that company which was issued April 8th, 1890, has been voted by 356 the persons to whom it was then issued, or to whom it was by them transferred, either personally or by proxy. I do not want to ask for an answer that shall be definite enough to cover each meeting, but I want to ask whether as a general thing this has been done?

A. The stock issued April 8th, 1890, is the stock that has been voted at subsequent meetings and is the only stock.

491. Q. (490. Q. repeated). A. Yes.

492. Q. Now, you have been asked several times about who built this piece of track and that piece of track, and I want, if I can to get you to tell us just what you know about this, so that we can know how much of it is inference and how much of it is not. Now, you know that this Des Moines & St. Louis record of the director's meeting of May 10th, 1881, shows a draft of a contract between that company and James F. How, agent, under which How was to build the Des Moines & St. Louis Railroad? A. Yes.

493. Q. You also know the account of which a copy if attached to the deposition of Mr. Tobin, the account being taken from the books of the Wabash, St. Louis, and Pacific Railway Company, headed, "Real Estate Des Moines. Joint a/c D. & St. L. & D. & N. W." commencing this way: "Debits: April, 1881, For the following payments for a/c of real estate in the City of Des Moines, Iowa, charged to Des Moines & St. Louis R. R. in the months of February, March and April, 1881, now transferred to real estate Des Moines, the property being held for joint account of the Des Moines & St. Louis and Des Moines & North Western Rys., as per letter of James S. Clarkson, Pt. filed herewith;" Then referring to 357 the preceding question, you knew of this account that I have just referred to on the Wabash books covering these expenditures in Des Moines? A. Yes.

494. Q. You have already testified, I believe, that you helped Mr. Trumbell to check the items which were used in carrying into this account the sum of \$36,391.39, which was the amount expended by Gen. Dodge in the city limits and for which the Wabash credited him and charged this account?

A. Yes.

495. Q. Now, was it these acts which you relied upon as the basis of your statement, which you have made several times, that the Wabash Co. paid all of the money that was paid inside of the city limits of Des Moines?

A. It was.

496. Q. Now, under this stipulation, I wish to read into the record a letter from the record in the case in the State Court that has been referred to, entitled Chicago, Milwaukee & St. Paul Railway Co. vs. Des Moines Union Railway Co., "St. Louis, Des Moines & Northern Railway Co. Chief Engineer's office. E. C. Kinney, chief engineer, Des Moines, Iowa, August 24th, 1882. G. M. Dodge, Esq., 195 Broadway, New York. Dear Sir: Distance from city limits to Clive, $5\frac{3}{4}$ miles at \$4,000. 21,520.

Clive to Boone 35.185 miles at \$8,000. 281,480.

Total bonds from city limits to end of track 303,000.

You have already received bonds of \$144,000.; balance of bonds due you \$159,000. I will try to get Mr. Clarkson to send certificates signed so you can get bonds from Mercantile Trust Co. Yours truly, F. M. Hubbell, Treasurer." Now, refreshing your recollection by this transcript, can you say

whether the original of this letter was all in your hand-
358 writing except the letter-head? A. Yes.

497. Q. Now, Mr. Hubbell, I call your attention to the statement in Plaintiffs' Exhibit 48, which was the bill filed to foreclose the mortgage under which the bonds referred to in the letter were issued, "that the aggregate of bonds sold and now outstanding is \$303,000.", and I wish you would state whether or not those bonds were issued to Gen. Dodge, by the St. Louis, Des Moines & Northern, to pay Gen. Dodge for that road? A. They were.

498. Q. Now then, will you please state whether or not the St. Louis Des Moines & Northern—and whether that is something that you knew from the letter—paid Gen. Dodge anything on account of the road inside of the city limits?

A. It did not. I remember writing that letter distinctly.

499. Q. Now, what is the fact as to whether you know from the books of the Narrow Gauge Construction Co. aside from your recollection, if you have any, that Gen. Dodge advanced the money for the building of the St. Louis, Des Moines & Northern Railway to the Narrow Gauge Railway Construction Co. from the city limits of Des Moines to Boone.

Complainants' counsel objects to this as incompetent, because this is not the best evidence, and is a mere conclusion of the witness.

A. I know from the books and I know from my knowledge.

Complainants' counsel move to strike out the answer because it is indefinite as to what he knows of his own knowledge and what he knows from the books, and because it gives no [but] that is a conclusion.

500. Q. You have stated here that you had knowledge of this contract with How as agent, as to the Des Moines & St. Louis Railroad Co., and that you have knowledge or
359 believe you have knowledge that the books of the Wabash Co. showed that it had ultimately advanced all of the money for the construction of the road inside of the City of Des Moines, that a part of this had been advanced originally by Gen. Dodge, he being re-imbursed by a credit on the Wabash books, and that Gen. Dodge advanced the money through the Construction Company which it used in the work it did in building the St. Louis, Des Moines & Northern Railway, and when the St. Louis, Des Moines & Northern Railway Co. issued its bonds to Gen. Dodge it issued them only up to the west city limits of the city of Des Moines; are there any other matters of facts that occur to you now which have formed the basis of your answers as to which companies built the various pieces of track?

A. As I paid out the money that Gen. Dodge furnished to me as president of the Construction Company, I know and I remember that he furnished all the money to build the road from West 28th Street to Boone.

501. Q. That does not answer my question. (500. Q. repeated).

A. I disbursed all the money to build the tracks inside of the city of Des Moines and from 28th Street to Boone. I know where it came from and I know it personally as well as knowing it from the books, and from depositions given in regard to the books of the company of the Wabash St. Louis & Pacific Railway Co.

502. Q. Did you disburse the money that was paid for building the bridge in Des Moines?

A. No, I did not.

503. Q. Then your statement ago was a little inaccurate?

A. Yes, a little inaccurate.

504. Q. What did you mean by the statement when
360 you said you disbursed all the money that was paid in Des Moines?

A. I meant that I disbursed the money that was paid out for real estate and knew that the Wabash contributed the rest of the money by an examination of the depositions given with reference to the accounts of the Wabash Co.

505. Q. You testified that the St. Louis Des Moines & Northern used the road up to the passenger station prior to May 1st, 1888, under some arrangement with the Wabash; was its use of the property limited to that or did it go all over the whole terminals?

A. It went all over the whole terminals wherever there was a narrow gauge track, and it had occasion to use the track.

506. Q. As I recollect it you testified in Plaintiffs' Exhibit No. 79 which shows the various transfers of the Des Moines Union stock, that there were no transfers of more than one share lots except the transfer to Gen. Dodge, except the transfers in which you, or your firm or some corporation in which your firm was interested was concerned, is that correct? A. No, I don't think that answer was correct.

507. Q. Do you notice the transfer here from the Purchasing Committee to the Continental Trust Co. under date of August 28th, 1890, of 498 shares? A. Yes, I notice that.

508. Q. Did you have any interest in either side of that? A. I did not.

509. Q. You notice a transfer from the Des Moines Northern & Western Railroad Co. to the Chicago, Milwaukee & St. Paul Railway Co.? A. Yes, I notice that.

510. Q. Were you interested in either side of that? A. No.

511. Q. Do you notice a transfer from the Continental Trust Co. to the New York Trust Co.? A. Yes.

361 512. Q. Were you interested in that? A. No.

Recross Examination

By Mr. Blodgett:

566X. Q. You have referred to this transfer of Des Moines Union Railway stock by the Purchasing Committee of the Wabash Railroad Co. to the Continental Trust Co.; do you know whether that was a sale or a pledge of that stock? A. I do not.

567X. Q. You spoke of the transfer of the Des Moines, Northern & Western, to the Chicago, Milwaukee & St. Paul Railway Co., when you sold your interest in the Des Moines Northern & Western Railroad Co. to the Chicago, Milwaukee & St. Paul Railway Co., that stock went along with the property, did it not? A. Yes.

568X. Q. That transfer shown from the Continental Trust Co. to the New York Trust Co.; was not that transfer made on account of the consolidation or merger of those two trust companies?

A. I don't know anything about it, I suppose it was, but I don't know.

569X. Q. Mr. Guernsey has shown you a statement signed by Wells H. Blodgett and others in which it is set forth that a meeting of the stockholders of the Des Moines Union Railway Co. was duly called and held on the 8th day of April, 1890, for the purpose of amending the articles of incorporation of the Des Moines Union Railway Co., and at said an-

nual meeting the stockholders did unanimously adopt certain amendments to said articles, that is the statement?

A. I think so.

570X. Q. I will ask you who prepared that statement that is signed? A. That is a part of the articles.

571X. Q. Who prepared that statement to which the signatures are attached?

A. It must have been either Mr. Cummins or you, I don't know.

572X. Q. You did not prepare it?

A. No, I did not.

573X. Q. I was not here, was I?

A. You were not at the meeting, only by proxy.

574X. Q. According to your best recollection, who would you say prepared it?

A. I fancy that Mr. Cummins prepared it.

575X. Q. Now, I will ask you whether Mr. W. H. Blodgett was to your knowledge present at a meeting of the stockholders of the Des Moines Union Railway Co. at Des Moines, Iowa, on April 8th, 1890? A. I think not.

576X. Q. Now, what other names besides that of W. H. Blodgett are signed to that statement, will you read them?

A. F. M. Hubbell, F. C. Hubbell, A. B. Cummins, Horace Seeley, L. M. Martin, Charles M. Hays, James F. How, G. M. Dodge, H. D. Thompson.

577X. Q. I will ask you if that statement or paper was not presented by you to W. H. Blodgett and signed by him at your request in St. Louis?

A. I have not any recollection.

578X. Q. Do you remember where or when Gen. Dodge signed that paper?

A. Gen. Dodge acknowledged it April 16th, 1890.

579X. Q. Before a notary where?

A. Before a notary in King's County, New York.

580X. Q. Now, how many persons who signed that statement were personally present at the meeting?

A. Six of the persons were personally present.

581X. Q. Read the names please?

A. J. F. How, C. M. Hays, F. M. Hubbell, L. M. Martin, F. C. Hubbell and A. B. Cummins.

582X. Q. What persons who signed the paper or statement were not personally present?

A. G. M. Dodge was not present; W. H. Blodgett was not present.

By Mr. Guernsey:

363 583X. Q. Was Horace Seeley?

A. It does not say he was; I don't think he was there.

By Mr. Blodgett:

584X. Q. The record does not show him present?

A. No.

585X. Q. There was another one?

A. H. D. Thompson, he was not present; Seeley and Thompson signed it without being stockholders.

By Mr. Cook:

586X. Q. It is true, is it not, that soon after the organization of the St. Louis Des Moines & Northern Railway Co. it made a contract or agreement with the Narrow Gauge Railway Construction Co. under which the latter company was to construct its road and was to receive a certain amount of bonds and a certain amount of stock per mile of road constructed?

A. My recollection is that the contract was drawn up, but the amount to be paid to the Construction Company was not filled in because the engineer was unable to give the quantities, and the reason that the bonds were \$8,000. a mile, is that the law at that time did not permit more than \$8,000. a mile to be issued on a narrow gauge railroad.

587X. Q. Well, it is true that the Narrow Gauge Construction Company undertook to construct the road for bonds to be issued by the railroad company and stock in that company.

A. My belief is that the contract was never executed, that we got started, Gen. Dodge began to furnish the money and nobody knew what it was going to cost, Gen. Dodge was disappointed at the amount of it and finally under protest kept on furnishing money to finish the road.

588X. Q. And took the bonds and stock?

A. And took the bonds and stock, I don't think the contract was ever signed.

364 589X. Q. Was there a contract between Gen. Dodge and the Construction Co.?

A. I don't think there was. We refused to contract any debts, unless the General would pay us.

590X. Q. Have you got the record of the Narrow Gauge Construction Co. here?

A. No, not here. He furnished all the money.

591X. Q. And got all the bonds?

A. He got all the bonds.

592X. Q. And those bonds were issued by the St. Louis, Des Moines & Northern Railroad Co.? A. Yes.

593X. Q. And he got half of all the stock that was issued? A. He got all of the preferred stock.

594X. Q. And half of the common?

A. And half of the common.

595X. Q. Of the St. Louis, Des Moines & Northern Railway Co.? A. Yes.

596X. Q. And the Construction Company got the other half of the common stock?

A. That is the way I remember it.

597X. Q. That mortgage that was given by the St. Louis Des Moines & Northern Railway Co. to secure those bonds that Gen. Dodge got was afterwards foreclosed? A. Yes.

598X. Q. Now, after the three lines of railroad came into Des Moines and were operated, how long before the Des Moines Union Railway Co. took over the property, took control of the property in 1889, was that? A. 1888.

599X. Q. In 1888 how was the terminal property maintained?

A. It was maintained by the Wabash, St. Louis & Pacific and the Purchasing Committee up to May 1st, 1888.

600X. Q. And how was the cost apportioned among the three lines?

Defendants' counsel objects to the question because the evidence shows there were only two roads using it, the Wabash Purchasing Committee and the St. Louis, Des Moines & Northern, and the question assumes that the cost was
365 apportioned between three lines when there is no evidence to show that.

A. The Wabash, St. Louis & Pacific operated the Des Moines & Northwestern and the Des Moines and St. Louis under leases, and I don't know who paid the maintenance.

601X. Q. Did the St. Louis Des Moines & Northern contribute towards it, while it was operating the Boone line?

A. I can only guess at it.

602X. Q. Don't you know it did contribute, is not that your understanding that it did contribute?

Defendants' counsel objects to the witness guessing or stating his understanding.

603X. Q. Is it not your understanding that the St. Louis, Des Moines & Northern Railway Co. contributed its proportion of the cost of maintaining the terminal property on a wheelage basis?

Defendants' counsel renews his objection.

A. I was not connected with those roads at that time and do not know how they kept their accounts. I could tell you what I supposed, I suppose that Gen. Dodge settled with the Wabash.

Complainants' counsel move to strike out the supposition of the witness as wholly incompetent and not responsive to the question.

Defendants' counsel stated that it may be stricken out.

604X. Q. Will you produce the record of the Narrow Gauge Construction Co, so that I may, if I see fit introduce any part of it? A. Yes.

366 Complainants' counsel state that when the maps referred to are prepared they will be offered in evidence by the complainants.

Not being able to complete the taking of these depositions on this day, by consent of counsel I adjourned the further taking of the same until 9:30 A. M. June 6th, 1911.

JAMES F. ALLEN,
Examiner.

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Stipulation filed October 23, 1912, as to addition to deposition of Frederick M. Hubbell.

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Stipulation.

It is hereby stipulated by and between the parties hereto that there shall be added to the deposition of F. M. Hubbell taken in this case, commencing on the 31st day of May, A. D. 1911, as a part of his recross-examination the following:

I. Question. Mr. Hubbell, when you were examined as a witness in this case on the last day of May and first days of June, 1911, the following interrogatory was propounded to you:

"I will ask you whether, as secretary of the Des Moines Union Railway Company, you now have in your possession, a certified copy, or other copy of any resolution adopted at any meeting of the stockholders or directors of the Des Moines and St. Louis Railroad Company, prior to the 8th day of April, 1890, authorizing J. F. How to be present at any meeting of the stockholders of the Des Moines Union Rail-
369 way Company and vote any share or shares of stock in that company, either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Company?"

To that interrogatory, you replied as follows:

"I do not know whether I have or not. I will look for them."

Now I will ask you whether, since your former examination, you have as secretary, made search among your papers for such a resolution as is described in the interrogatory I have just read?

Answer. Yes.

2. Question. Will you please state whether you have or have not found such a resolution.

Answer. I have not.

3. Question. On your former examination, the following interrogatory was propounded to you:

"I will ask you whether as secretary of the Des Moines Union Railway Company, you now have in your possession a certified copy, or any other copy, of a resolution adopted at any meeting of the stockholders or directors of the Des Moines and Northern Railway Company prior to the 8th day of April, 1890, authorizing Mr. A. B. Cummins to be present at any meeting of the stockholders of the Des Moines Union Railway Company, and vote any share or shares of stock in that company, then owned or held by said Des Moines and Northern Railway Company, either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Company?"

To that interrogatory, you replied as follows:

"I do not know whether I have or not."

You were also asked the following question:

"Will you look and see whether you can find such a resolution or copy of such resolution, and produce it later, if you can find it?"

370 And to that question you replied as follows:

"Yes, I will look."

Now, I will ask you, whether, since your former examination you have as secretary made search among your papers for such a resolution as is described in the interrogatory I have just read? Answer. Yes.

4. Question. Will you please state whether you have or have not found such a resolution?

Answer. I have not.

5. Question. On your former examination, the following interrogatory was also propounded to you:

"I will ask you whether as secretary of the Des Moines Union Railway Company, you now have in your possession a

certified copy or other copy of any resolution adopted at any meeting of the stockholders or directors of the Des Moines and Northwestern Railway Company, prior to the 8th day of April, 1890, authorizing you to be present at any meeting of the stockholders of the Des Moines Union Railway Company and vote any share or shares of stock in that company that were then owned or held by said Des Moines and Northwestern Railway Company, either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Company?"

To the foregoing interrogatory you replied as follows:

"I do not know whether I have or not."

You were also asked the following question:

"Will you make an examination and see whether you can find any among the papers and records?"

And to that interrogatory you replied as follows:

"Yes, I will look in the place where we keep the proxies, and see if any of them have been saved or not."

371 Now, I will ask you whether since your former examination, you have, as secretary, made search among your papers for such a resolution as is described in the foregoing interrogatory? Answer. I have.

6. Question. Will you please state whether you have or have not found such a resolution.

Answer. I have not.

7. Question. On your former examination, the following interrogatory was propounded to you:

"I will ask you whether as secretary of the Des Moines Union Railway Company, you now have in your possession, a written proxy, signed before the 8th day of April, 1890, of W. H. Blodgett, as a stockholder in the Des Moines Union Railway Company, by which he authorized J. F. How to attend any meeting, and vote any share or shares of stock then owned by him, either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Company?"

To that interrogatory you replied as follows:

"This meeting occurred twenty-one years ago, and I do not know whether the proxies can be found, but I am certain that such proxies were in existence, and submitted at the meeting."

Now I will ask you, whether since your former examination, you have as secretary, made search among your papers for such a proxy as is described in the foregoing interrogatory?

Answer. I have.

8. Question. Will you please state whether you have or have not found such a proxy?

Answer. I have not.

372 9. Question. On your former examination the following interrogatory was also propounded to you:

"As secretary of said Terminal Company have you now in your possession, any proxy executed by J. F. How, C. M. Hays, W. H. Blodgett, or either of them, prior to April 8, 1890, authorizing A. B. Cummins to be present at any meeting of the stockholders of the Des Moines Union Railway Company, and vote any share or shares of stock then owned or held by either of them in said Company, either for or against any proposed amendment of the articles of incorporation of said company?"

To that interrogatory you replied as follows:

"I do not know whether I have or not."

You were also, on that occasion, asked the following question:

"Will you look and see whether you have, and if so, will you produce them?"

To the last interrogatory you replied as follows:

"Yes, sir; I will look and see; you will have to send me a copy of the questions."

Now I will ask you, whether since your former examination, you have as secretary, made search among your papers, for such a proxy as is described in the foregoing interrogatory?

Answer. I have.

10. Question. Will you please state whether you have or have not found such a proxy?

Answer. I have not.

11. Question. On your former examination, the following interrogatory was also propounded to you:

"Will you examine, or have an examination made, to see whether you have a proxy from General Dodge, authorizing Mr. Martin to attend that meeting that was held on the 8th day of April, 1890, and vote either for or against the
373 proposed amendments?"

To that interrogatory you answered as follows:

"I will make an examination. In the different companies it was very common for proxies to be filed, and as a result they

were put in a pigeon hole in our vault, and if they have not been destroyed, many of them can be found now."

I will ask you whether since your former examination, you have, as secretary, made search among your papers for such a proxy as is described in the foregoing interrogatory?

Answer. I have.

12. Question. Will you please state whether you have or have not found such a proxy?

Answer. I have not.

The foregoing addition to the said deposition shall have the same force and effect in all respects as if it had been taken and returned with the said deposition in the first instance as a part thereof.

Dated this 23 day of October, A. D. 1912.

WELLS H. BLODGETT,
J. L. MINNIS,
J. C. COOK,
R. RYAN,

Solicitors for complainants.

GUERNSEY, PARKER & MILLER,
Solicitors for defendants.

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Pursuant to adjournment, as above stated, on June 6th, 1911, I continued the taking of said depositions as follows:

Present: W. H. Blodgett, Esq., J. L. Minnis, Esq., J. C. Cook, Esq., and Robert Ryan, Esq., counsel for complainants, and N T. Guernsey, Esq., counsel for defendants.

C. HUTTENLOCHER, being duly sworn, testifies as follows:

Direct Examination

By Mr. Guernsey:

1. Q. What is your name? A. C. Huttenlocher.
2. Q. Where do you reside? A. Des Moines.
3. Q. How long have you resided here?
A. Forty-five years.
4. Q. Were you employed by the firm of Polk & Hubbell during the period between 1880 and the time when the firm dissolved? A. Yes sir.
5. Q. Are these the books which you have here, the journal and ledger, of the Narrow Gauge Railway Construction Company? A. Yes sir, they are.
6. Q. What is the fact as to whether they were kept by you or under your supervision?

A. They were kept by me and under my supervision.

7. Q. In whose office were those books kept, and in what office was the business of this Construction Company transacted during the years 1881 and 1882?

A. In the office of Polk & Hubbell in Des Moines, in the rear room at 201 Fifth Street.

8. Q. In the city of Des Moines?

A. In the city of Des Moines.

9. Q. Now, what is the fact as to whether the books cover all the business transactions of the Narrow Gauge Railway Construction Company, and as to whether the entries in
375 the books were made at or about the time they purport to have been made, and are correct?

A. They are.

10. Q. Now, I wish you would tell us whether the books show how much money was disbursed through the Narrow Gauge Railway Construction Company, in connection with the building of the St. Louis, Des Moines & Northern Railway?

A. \$430,938.55.

11. Q. And do those books show where that money came from? A. Yes sir.

12. Q. Where did it come from?

A. It came from Gen. G. M. Dodge.

13. Q. Was any part of that money received from any one except Gen. G. M. Dodge? A. No sir.

14. Now, will you tell us what method was adopted in getting that money from Gen. Dodge, what your practice was, how you handled it?

A. Well, the Construction Company had a small working capital furnished by Gen. Dodge which was used in paying vouchers; and when the vouchers were paid and receipted they were sent to Gen. Dodge for payment. He deposited the money at the Park Bank, New York, to the credit of Polk & Hubbell, and Polk & Hubbell drew their draft on the Park Bank in favor of the Construction Company and deposited it to the credit of the Construction Company in the Des Moines bank.

15. Q. Later, was there any change in the method, if so, what was it?

A. I think that method continued all the time except at certain periods when estimates were sent to Gen. Dodge for payment and he would deposit the money in like manner, and when that was done, we would pay the estimates, and a few times, I think, vouchers were receipted by the party and sent
376 to him for payment before the money was advanced to the Construction Company. There was not very much of the latter.

16. Q. Do these books purport to contain any account between the Narrow Gauge Railway Construction Company and the St. Louis, Des Moines & Northern Railway Company relative to the construction of the railroad that was at one time operated by the St. Louis Des Moines & Northern Railway Company? A. No sir.

17. Q. Now, I wish you would state whether these books show the receipt by the Narrow Gauge Railway Construction Company of any bonds of the St. Louis, Des Moines & Northern Railway Company from that company or from any other source—I am talking about bonds and preferred stock?

A. Yes sir.

18. Q. What entry have you in mind?

A. Under date of August 24, 1882, I find that the Construction Company received 1938- $\frac{3}{4}$ shares of stock.

19. Q. Now, was that preferred stock or common stock?

A. Common stock.

20. Q. Do you find any entries showing the receipt of any bonds? A. No sir.

21. Q. Or of any preferred stock? A. No sir.

22. Q. Now, returning to this entry, I wish you would read the entry on the journal with reference to this common stock that you have just referred to?

A. On page 332 of the journal of the Narrow Gauge Railway Construction Company, under date of August 24, 1882, "St. L. D. M. & N. stock issued to Construction Co. \$193,875.00" That is the debit side of it. "Credit, Capital Stock as follows—\$193,875.00, 1938- $\frac{3}{4}$ shares, which is all the Construction Co. gets, city limits D. M. to Boone,, and is
377 common stock."

23. Q. In whose handwriting are those entries?

A. They are in my handwriting.

24. Q. And when were they made by you?

A. At the date of the entry.

25. Q. August 24, 1882? A. August 24, 1882.

26. Q. Aside from those entries that you have read, are there any entries upon the books of the Narrow Gauge Railway Construction Company showing the receipt by that company of any stock or bonds of the St. Louis Des Moines & Northern Railway Company? A. No sir.

27. Q. Now, aside from the entries that you have just read, do those books contain any entries to which the St. Louis, Des Moines & Northern Railway Company is a party, relating either to the construction of the railroad that was at one time operated by the St. Louis, Des Moines & Northern Railway Company, or to the payment for that railroad? A. No sir.

28. Q. Now, you have stated, I think, that these books show that the Construction Company received from Gen. G.

M. Dodge for disbursement \$430,938.55 for the building of the railroad at one time operated by the St. Louis, Des Moines & Northern Railway Co. Please state what amount those books show that the Construction Co. paid out on Gen. Dodge's account for the building of said railroad.

Complainants' counsel object to the use of the books as evidence, because they could not show any account or any transaction between either of the complainants and any one, and they are not such books of account as would be competent in evidence; and furthermore object to so much of the
378 question as assumes that this money was paid out on account of Gen. Dodge, and because the question calls for the conclusion of the witness as to what the account shows and otherwise.

A. \$430,938.55.

29. Q. I see you have opened the ledger at page 20. Is that the account which you used as a basis of the answer you just made? A. Yes sir.

30. Q. Will you furnish to the notary a copy of that page, showing both sides of that account with Gen. Dodge?

A. Yes.

31. Q. This page is headed, "G. M. Dodge, Const." What does "Const." mean? A. Construction.

32. Q. I call your attention to a paper which is as follows:

"Distribution of the sum of \$430,938.55 paid by G. M. Dodge.

1882

Nov. 11,	Subsidy expense	271.25
	Miscellaneous	3268.66
	Real estate	12015.55
	Joint fastenings	11677.63
	Bridging	121492.38
	Grading tools	1335.76
	Cattle G. & crossings	1208.51
	Water stations	4350.32
	Construction	4661.03
	Track laying and surfacing	27484.90
	Building and fixtures	2939.04
	Fencing	536.66
	Traffic stations & Whs.	4751.72
379	Ditching	973.65
	Frogs & Switching	126.00
	Ties	46971.85
	Telegraph	5055.00
	Right of way	47163.92
	Fuel	633.37
	Grading	89272.06
	Iron	9448.36
	Engineering	14177.03
	Engineering tools	1244.07
	Stationery	23.52
	Rolling stock	19854.06
	Real estate (recording D. M.)	2.25
	Total	430938.55

and ask you whether that is a copy of one side of this account, and whether it shows the amount received from Gen. Dodge, or the amount paid out for him?

A. Yes, this is a copy.

33. Q. It is a copy of the amounts paid out for Gen. Dodge?

A. It is a copy of the amounts paid out for Gen. Dodge.

34. Q. Is that what appears on the ledger on the debit side of this account?

A. Yes sir, being the distribution of the amount spoken of.

35. Q. And is a complete copy of the debit side of the ledger page except the references to the pages in the journal?

A. Yes sir.

Q. Now, will you read to the notary the credit side of this account? A. Yes, it is as follows:

380 Page 14.

G. M. Dodge (Const. a/c)

1881.

June 24	Pd. to Yeomans17	1	2000.00
" 24	Pd. to Yeomans17	2	5810.00
July 28	do42	3	7030.00
" 23	Vouchers sent to him to be paid	6 4	1149.23

Engineers May

June 15	G. M. Dodge Cal. a/c.11	5	2104.49
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Ties for May

15	G. M. Dodge Cal. a/c.11	6	2751.64
27	Frt. ties Real Est &c.20	7	8869.69
July 7	Right of Way &c....24	8	4021.12
" 8	Freight Right Way &c	26 9	4583.71
" 20	Dep. by P. & H.35	10	5958.23
" 15	For'd Vouchers31	11	6091.64
" 22	Vouchers for'd37	12	2196.75
" 21	Logans for June ...36	13	7291.75
" 27	Voucher forwarded ..40	14	4995.10
" 30	do43	15	2345.21
Aug. 1	do45	16	4194.49
6	do50	17	2916.08
10	do56	18	3170.99
12	do59	19	6351.57
16	do64	20	3920.62
17	Logan & K. July ties.65	21	11320.75
22	Vouchers70	22	5031.46
23	do71	23	2321.24
23	do72	24	6544.68

112970.44 112970.44

381	Aug. 30	By Balance			112970.44
	" 26	Vouchers	76	25	3550.55
	" 26	do	76	26	3150.00
	" 31	do	81	27	2248.95
Sept.	6	Vouchers	85	28	5327.66
"	7	do	86	29	2470.69
"	10	do	90	30	3450.55
"	14	Martin do Flynn	93	31	12094.35
"	17	do	99	32	4697.10
"	20	"	104	33	6280.40
"	23	Raymond & C.	107	34	10384.95
"	23	M. Kavanaugh	107	35	2870.92
"	24	Logan & Kirkham	109	36	12278.25
"	29	Vouchers	114	37	4856.09
Oct.	6	do	121	38	4830.05
"	6	S. M. Yeomans Bal.	122	1	160.00
to pg. 19.					191620.95

Page 19.

G. M. Dodge Const.

Pg. 14

Oct.	6	/81 Bal. a/c rendered			191630.95
Oct.	18	Voucher	39	135	2371.84
	20	" M. H. King	40	137	3295.68
	20	" King & Welch	41	137	1201.65
					198488.64
	20	Von Atkisson & Brongham.	42	138	2425.72
	22	Vouchers	43	141	6789.52
	25	"	44	143	14187.09
	25	"	45	143	1439.16
	25	"	46	143	6745.78
382	27	"	47	148	4954.41
		Sept. Est.			
	27	Atkison & Brongham.....	48	149	5623.20
Nov.	9	"	49	168	3099.16
	12	M. Flynn	50	170	1877.25
	12	H. B. Mosher.....	51	170	1691.68
	12	Cannon & H.....	52	170	306.92
	12	M. H. King.....	53	170	513.61
	17	King & Welch.....	54	177	133.45
	17	Raymond & C.....	55	177	716.54
	17	" "	56	177	2428.64
	17	" "	57	177	4481.77
	17	M. Kavanaugh	58	177	1436.91
	21	Vouchers	59	184	3950.67
	29	M. Kavanaugh Final.....	60	197	1228.18
	29	Vous. ford.	61	197	1213.25
	30	" "	62	200	6214.48
		H. F. Getchells.			
Dec.	5	Vou. forwarded	63	206	1162.73
	7	Vous. for'd	64	210	2841.70
	19	" "	65	219	2863.84
	23	Nov. Pay Rolls.....	66	224	7100.90
	28	Frt. on Iron Rails.....	67	227	1105.84
1882.					
Jan.	9	M. King Nov. & final.....	68	233	480.17
	9	Atkisson & B. " "	69	233	894.22
	9	J. A. Wilson, Dec. Est.....	70	233	946.58
	9	Raymond & C. "	71	233	3987.29
		Depot at			
	9	Nelson & W. Grimes.....	72	234	835.00
383	9	Vous. Forded.	73	234	513.14
	10	Raymond & C. Nov. Est...	74	234	12975.15

	18	Vous. For'ded	75	244	389.11
	18	Vous. For'ded	76	243	6711.98
	20	" "	77	245	2105.89
Feb.	6	Raymond & C. Jan. Est.	78		16804.40
For'd					331676.49

Page 20.

G. M. Dodge Const.					
Feb.	6/82	By Balance foot up			331676.49
	16	Vous. forded.	79	268	4312.62
Mch.	18	" "	80	278	3566.12
Apr.	7	" "	81	286	2245.33
	12	" "	82	288	3853.22
	17	Raymond & C. Ests.	83	289	17565.83
May	3	Vous. forded	84	291	3018.70
	5	" "	85	292	2330.78
	6	" "	86	293	1465.79
	18	" "	87	297	2832.24
	24	Raymond & Co.	88	299	9556.06
	31	Sundry Vouchers	89	302	1453.78
June	13	" "	90	305	2975.10
	16	J. A. Wilson Apl. Est.	91	306	2993.95
	20	May Vouchers	92	309	3368.99
	30	June Vouchers Prt.	93	312	1599.25
July	10	Raymond & C. & Wilson	94	316	17752.58
	17	Vouchers	95	319	2243.84
	21	" June	96	321	4196.00
	28	J. A. Wilson final	97	322	1242.00
384	28	F. T. Nelson Depot	98	323	1100.00
Aug.	9	Eaton & Atkinson V.	99	324	1580.00
	18	Raymond & C.	100	329	1004.00
	19	Vouchers	101	331	1339.21
	31	do	102	335	2002.06
Sept.	30	Raymond & Co.	103	341	2359.48
Oct.	2	J. A. Wilson 10%	104	342	1304.53
					430938.55

285 37. Q. Is this a correct copy of the credit side of that account, showing the various amounts received from Gen. Dodge to make up the \$430,938.55? A. Yes sir.

38. Q. Now, without reference to the books of account, were you familiar with the details of the business of Polk & Hubbell? A. Yes sir.

39. Q. Did you have charge of their books of accounts?

A. Yes sir.

40. Q. As well as the books of account of the Construction Company? A. Yes sir.

41. Q. I wish you would state whether the Narrow Gauge Railway Construction Company, or Polk & Hubbell, ever to your knowledge received any preferred stock or bonds of the St. Louis, Des Moines & Northern Railway Co.?

A. No sir.

42. Q. Referring again to the books of account of the Narrow Gauge Railway Construction Co., will you please state whether or not any of the money for the acquisition of any right of way, which afterwards became a part of the terminal property inside of the city limits of the city of Des Moines, was paid by the St. Louis, Des Moines & Northern Railway Co.? A. No sir, not that I know of.

43. Q. Some pieces of that right of way inside of the city of Des Moines were acquired in the name of the St. Louis, Des Moines & Northern Railway Company; can you state who advanced the money to pay for the pieces of right of way that were so acquired? A. G. M. Dodge.

44. Q. Now, reference has been made to quite a number of condemnation suits which were instituted in the name of the St. Louis, Des Moines & Northern Railway Co., covering the right of way between Des Moines and Boone, and 386 outside the city limits of Des Moines; if you can, please state who advanced the money to pay for the acquisition of those pieces of right of way under those condemnations? A. G. M. Dodge.

45. Q. Now, have you prepared a statement showing the pieces of real estate inside of the city limits of Des Moines, paid for by Gen. Dodge, and what he paid for each one of them? A. Yes sir.

46. Q. Will you please read that statement to the notary?

A. Yes, it is as follows:

Page 78 Ledger.—280-256.

Real Estate Paid for by Dodge to Construction
Company in City of Des Moines.

			Journals
1981, June 10.	Pd. E. J. Adams for lots 1 & 2 in blk. 22 Hoxie's Addn.....	\$ 100.00	10
" 16	Pd. W. S. Sickman part of 800 for lot 2, O. P. 9-78-34.....	100.00	17
" 23.	Pd. John A. Wyet or John Mitchell for deed to St. L. D. M. & N. Ry. for lot 7 and part lot 8 in blk 22, Keene & Poindexter's Addn. and for lot 8, in blk. 22, Hoxie's Addn.....	1900.00	18
July 6.	Pd. T. E. Brown for lot 5, N. E. 8- 78-24 and O. P. Lot 13, N. W. 9-78-24.....	1900.00	23
	Also for a strip 30 ft. wide through lot 1, O. P. N ½ N. E. 8-78-24.....	1200.00	23-280
" 23.	Pd. Sarah Ann Hughes and W. S. Sick- man balance on lot 2, O. P. N. W. 9-78- 24 1 acre to St. L. D. M. & N. Ry.....	800.00	29
26 Aug. 11.	Pd. E. J. Adams & Co. for balance for deed from Wm. M. Fagen and wife lots 1 & 2, blk. 22, Hoxie's Addn.....	1415.55	37
Aug. 23.	Pd. A. G. Field for lot 5 in blk 33, Keene & Poindexter's Addn.....	700.00	72
Sept. 5	Pd. W. M. Ishbard for W. O. Curtis for lot 6 blk 31, Keene & Poindexter's Addn.....	650.00	84
1000	and lots 6, 7, 8, 9, in Blk. 33.....	1000.00	84
2250			
June 25.	Pd J. C. Savery per shff. for lot 2, N. E. 8-78-24.....	1950.00	18 Ledger 280
July 5.	Shff. Condemnation fees.....	120.00	23 "
1982, Mch. 13.	Pd. H. A. Elliott for 100 ft. strip 8, end E. ½ lot 2, N. W. 8-78-24.....	710.00	276 256
		\$13085.55	

In the paper referred to above the figures "280-256" to the right of "Page 78 Ledger," all figures to the right of the column with the footing \$13,085.55, the figures "650.00 1600" and "2250" under the date of Sept. 5, and the figures "650.00" in the column referred to are in lead pencil.

47. Q. Now, at the top of the statement is "Page 78 Ledger 280-256;" are those the ledger pages?

A. Yes, of the Narrow Gauge Railway Construction Company.

48. Q. The book from which you obtained the information?

A. Yes sir.

49. Q. And then, under "Journal" and opposite the amounts, are some figures, 10, 12, 16, 23, etc.; are those the pages in the ledger and journal?

A. Yes sir; this is the journal page in pencil.

50. Q. I see down here opposite the item 1950 "Ledger 280." A. That is Ledger page 280.

51. Q. So in three or four instances you have given 388 the ledger page as well as the journal page?

A. Yes sir.

52. Q. Now, does that statement just referred to list all the real estate included in the terminal property inside of the city limits of Des Moines, and paid for by money advanced by Gen. Dodge? A. Yes sir.

53. Q. Who paid for the balance of the real estate acquired in the city of Des Moines and included in the terminal property conveyed to the Des Moines Union in 1887 and 1888 by James F. How and James F. How, Trustee, the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company and Gen. Dodge?

A. The Wabash, St. Louis & Pacific Railway Company.

54. Q. What is the fact as to whether you yourself were personally engaged in those transactions at that time?

A. I had more or less to do with them most all the time.

Cross-Examination

By Mr. Cook:

1X. Q. To make the matter short, it is true, is it not, that the Narrow Gauge Railway Construction Company had an agreement either in writing or an oral understanding, with the St. Louis, Des Moines & Northern Railway Company, that it was to construct the lines of road of that company, and was to receive a certain amount of bonds per mile and a certain amount of stock per mile as the road was being built?

A. I never heard of it or knew of it.

2X. Q. Have you the corporation records of the Narrow Gauge Railway Construction Company in your possession?

A. I don't think I have.

3X. Q. Then you knew, did you not, that the Narrow Gauge Railway Construction Company made an arrangement with Gen. Dodge under which he was to furnish money?

A. Yes sir.

389 4X. Q. For building the line, including the payment for right of way? A. Yes sir.

5X. Q. And he was to have for that all of the bonds and all the preferred stock and one half of the common stock that were issued by the St. Louis, Des Moines & Northern Railway Company? A. I don't know anything about that.

6X. Q. He did in fact receive all the bonds and all the preferred stock, and half of the common stock of the St. Louis, Des Moines & Northern Railway Company, didn't he?

A. I don't know.

7X. Q. You do not know anything about it? A. No sir.

8X. Q. You know that the Narrow Gauge Railway Construction Company got one-half of the common stock that was issued by the St. Louis, Des Moines & Northern Railway Company? A. They got what the record shows here.

9X. Q. That was half of all of the common stock?

A. I don't know whether it was or not, I can look and see.

10X. Q. Look and see.

A. It does not state what proportion it is.

It is understood and agreed between Mr. Guernsey and Mr. Cook that Mr. Cook may have access to the books of account and corporation records of the Narrow Gauge Railway Construction Co. and the books from which the witness has testified, and that Mr. Cook may hereafter introduce such parts of said books as he elects.

By Mr. Minnis:

11X. Q. Who had charge of the purchase of property acquired in the city of Des Moines that was in the names of James F. How, James F. How, Trustee, G. M. Dpdge and the Des Moines & St. Louis Railroad Company, which you say was paid for by the Wabash, St. Louis & Pacific Railway Company?

A. You mean the purchase of it?

12X. Q. Yes.

A. It was done at our office; Mr. Hubbell had most to do with it.

13X. Q. What do you mean by "our office?"

A. The Construction Company's office.

14X. Q. Did Mr. Hubbell have something to do with the purchase of the property?

A. Yes sir; he employed agents to look after it and get it.

15X. Q. How do you know that the Wabash, St. Louis & Pacific Railway Company paid for it?

A. Because the books show it.

16X. Q. Whose books?

A. The Narrow Gauge Railway Construction Company's.

17X. Q. Did you make those entries?

A. A good many of them.

18X. Q. Did you have any personal knowledge of any payment by the Wabash, St. Louis & Pacific Railway Company?

A. Vouchers were sent to them for payment and they remitted for it.

19X. Q. Who was president of the Narrow Gauge Railway Construction Company?

A. Mr. Hubbell tells me he was.

391 C. Huttenlocker, in continuation of his deposition, testifies as follows:

Cross-Examination Resumed

By Mr. Cook:

20X. Q. Will you look at the book which I now hand you and which is the record of the meetings of stockholders and directors of the Narrow Gauge Railway Construction Co. and state what parts of it, if any, are in your handwriting?

A. Page 52, the meeting of June 13th, 1882, of the board of directors, down to and including page 71 of the board of directors, the meeting dated December 9th, 1884.

21X. Q. The remainder of the record is in whose handwriting? A. John S. Polk's.

22X. Q. Who was the son of Jefferson S. Polk?

A. Yes sir.

Complainants' counsel here offer in evidence the following parts of said record, showing the meetings of stockholders and of directors at the dates shown in the record identified by the witness as corporation records of the Narrow Gauge Railway Construction Co.

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Redirect Examination

By Mr. Guernsey:

55. Q. Are the journal and ledger that you referred to this morning in connection with your testimony the only books of account which the Narrow Gauge Railway Construction Co. had? A. Yes sir.

56. Q. And was this journal its book of original entries?

A. Yes sir.

57. Q. And the entries made in the journal are original entries of its transactions? A. Yes sir.

393 F. C. Hubbell, being duly sworn, testifies as follows:

Direct Examination

By Mr. Guernsey:

1. Q. State your name, age, residence and occupation?

A. My name is F. C. Hubbell, age forty-seven, residence Des Moines, occupation president of the Des Moines Union Railway Co.

2. Q. You are a member of the firm of F. M. Hubbell & Son, and were in 1894? A. Yes sir.

3. Q. When did you become a director in the Des Moines Union Railway Company? A. January, 1890.

4. Q. Have you been a director continuously ever since?

A. Yes sir.

5. Q. And when did you become president of that company? A. January 1892.

6. Q. Have you been president continuously ever since?

A. Yes sir.

7. Q. What, if any, connection did you have personally with the acquisition of the terminal property in Des Moines, the building of the Des Moines & St. Louis Railroad, the Des Moines & Northwestern Railway, and the St. Louis, Des Moines & Northern Railway Company, or with the transfer of the terminal property in Des Moines to the Des Moines Union Railway Company?

A. I had no personal connection with any of those transactions.

8. Q. What, if any, personal knowledge had you in reference to them?

A. I had no personal knowledge.

9. Q. Were you at one time connected with the Des Moines & Northwestern Railway Company? A. Yes sir.

10. Q. When did your connection with that company commence?

A. I would have to look that up, I was a director in 1889.

11. Q. When did you first become an officer in the company just referred to?

A. I became vice-president on January 2nd, 1890.

394 12. Q. Did you have any other office?

A. I was a director.

13. Q. Were you superintendent?

A. Not at that time.

14. Q. When did you become superintendent?

A. January 1, 1891.

15. Q. And, as superintendent, did you have charge of the operation?

A. Yes sir, I was vice-president and superintendent from January 1st, 1891, until the corporation went out of existence.

16. Q. You mean the corporation went out of existence or the property was consolidated?

A. Until the consolidation of the property with the Des Moines & Northern, the consolidation of the Des Moines, Northern & Western Railway Company.

17. Q. Did you have charge of the operation of the consolidated property for the Des Moines, Northern & Western?

A. Yes sir.

18. Q. For how long?

A. Until that company was foreclosed and the new company organized known as the Des Moines, Northern & Western Railroad Company.

19. Q. Did you have charge of operations for that company? A. Yes sir.

20. Q. For how long?

A. Until Hubbell & Son sold their stock to the Chicago, Milwaukee & St. Paul Railway Company, in the last days of December, 1898.

21. Q. You were also a director in each of those companies—the Des Moines, Northern & Western Railway Company, and the Des Moines Northern & Western Railroad Company? A. Yes sir.

22. Q. Do you remember whether you were vice-president of each of them? A. Yes sir.

23. Q. Now, I wish you would state whether, during the time that you were connected with those companies that have been named, the Des Moines & Northwestern Railway Company, the Des Moines, Northern & Western Railway Company and the Des Moines, Northern & Western Railroad Company, either of those companies to your knowledge claimed any rights in the terminal property under the contract of Jan. 2nd, 1882?

A. None of them did.

24. Q. Now, during this entire period I wish you would state whether you ever heard it claimed by any one, either on behalf of the companies I have mentioned, or on behalf of the Wabash Company—by Wabash Company I mean the various Wabash organizations—during that period, that any rights existed under this contract?

A. No, I never heard any officer or any one connected with the various corporations of which you spoke claim any rights for either of the companies under the contract of January 2nd, 1882.

25. Q. Now, during the time you were connected with the companies that have been mentioned, did either of the companies with which you were so connected assert any right to occupy the terminal property of the Des Moines Union Railway Company, except the rights conferred upon them by the lease of May 10, 1889, as ratified July 31, 1897?

A. No sir, I never heard anybody discuss any rights to use the terminal property, only under the contract mentioned.

26. Q. During the period that you were president of the Des Moines Union Railway Company—that is, from 1892 down to the time this suit was brought—what is the fact as to whether frequently matters came up for adjustment between the Des Moines Union and the tenant companies?

A. Yes sir, there were occasional disputes as to the payment of bills, nothing of a serious nature.

27. Q. During this entire period since you have been
396 president of the Des Moines Union, and up to the time
of the bringing of this suit, please state whether any
of the tenant companies to your knowledge ever asserted any
rights whatever under the contract of 1882?

A. They never did.

28. Q. In the bill in this case, Paragraph 11 of the amend-
ed bill, if my notes are correct, it is said that the companies
then owning the three railroads; the Des Moines & St. Louis,
the Des Moines & Northwestern and the St. Louis, Des Moines
& Northern, purchased more property adjacent to that there-
tofore acquired, and turned it over to the Terminal Com-
pany and built a union passenger depot and additional side-
tracks or some spur tracks to industries. Now, what is the
fact as to whether those companies, or either of them pur-
chased more property adjacent to that theretofore acquired
and turned it over to the Terminal Company?

A. It is not correct.

29. Q. Have you assisted me in getting together the ma-
terial that is contained in this stipulation of May 31, 1911?

A. Yes sir.

30. Q. And what is the fact as to whether you have
searched through the deeds of the Des Moines Union Railway
Company, and does this stipulation of May 31, 1911, with the
stipulation filed March 23, 1911, contain all the deeds con-
veying property to the Des Moines Union Railway Company
of which you have any knowledge, or which you are able to find?

A. Yes sir.

31. Q. What is the fact as to whether either of the com-
panies built a union passenger depot as alleged in this para-
graph of the bill? A. It is not true.

32. Q. When was the Union Station built?

A. During the year 1898.

397 33. Q. And who had charge of the building of it?

A. I did.

34. Q. And what relation did you then sustain to the Des
Moines Union Railway Company? A. President.

35. Q. And by what company was the Union Station built?

A. The Des Moines Union Railway Company built it.

36. Q. What additional property was acquired on account
of that Union Station?

A. A strip of land 44 feet wide north and south, extending
from Fifth Street to Sixth Street, and a strip of land fourteen
feet wide extending from Sixth to Seventh Streets.

37. Q. Now, I wish you would state whether the deeds
which are referred to and which are contained in the stipula-
tion of May 31, 1911, being the deed from F. M. Hubbell,
Trustee, dated May 2, 1898, defendants' exhibit 568, the deed

from F. M. Hubbell and wife, dated May 2nd, 1898, defendants' exhibit 569, and the deed from F. M. Hubbell dated February 15, 1899, defendants' exhibit 571, and the deed from F. M. Hubbell dated March, 1899, defendants' exhibit 572, are conveyances by which the title to this property was transferred to the Des Moines Union Railway Company? A. Yes sir.

38. Q. Now, did either of the Wabash Companies or the Des Moines, Northern & Western Railroad Company acquire any of this property, or pay for it, or have anything to do with its acquisition?

A. Nothing at all. The Des Moines Union bought and paid for it.

39. Q. Do you remember the manner in which it was paid for? A. I cannot remember at this moment.

40. Q. Now, with reference to this same paragraph of the amended bill it is said that these complainants built additional side tracks or spur-tracks; what is the fact about that?

A. It is not true.

398 41. Q. Did you have any personal connection with the negotiations of the contract between F. M. Hubbell and the Purchasing Committee which was made on for the purchase of the Des Moines Union stock and bonds?

A. No sir.

42. Q. Have you any personal knowledge with reference to those transactions? A. No sir.

43. Q. It is alleged on page 31 of the bill that you conspired with F. M. Hubbell and with divers other parties unknown to the complainants, and contriving how you might so manipulate the proceedings and records of said corporation to accomplish your designs and purposes; caused a statement to be written into a book purporting to be the record of the corporate proceedings of the Des Moines Union, to the effect that said Frederick M. Hubbell had been elected Secretary of said Des Moines Union Railway Company (I think that refers to the meeting of January, 1890); you first became a director in 1890, as I recollect? A. Yes sir.

44. Q. What do you say as to this so-called conspiracy, do you know anything about such a conspiracy?

A. No sir, there was no conspiracy.

45. Q. Now, it is said that pursuant to this conspiracy you and your father and these other alleged conspirators that are unknown, caused notices to be sent out to persons designated as stockholders in the Des Moines Union, stating there would be a meeting of the stockholders of the company for the purpose of amending its articles of incorporation. What did you have to do with sending out the notices?

A. I had nothing to do with sending out the notices.

46. Q. If you have any knowledge as to any plans or pre-
arrangements or agreements between your father and
399 yourself, or your father and any one else, or yourself
and any one else, pursuant to which notices were sent
out, state what it was.

A. I had no agreement at all, nor do I know of any agree-
ment. The general understanding was that we were to have
a meeting on that date.

47. Q. The record shows that they adjourned to meet on
that date? A. I believe so.

48. Q. It is alleged further at page 32 of the amended bill
as printed, "And your orators further show that afterwards
they, the said defendants Frederick M. Hubbell, Frederick C.
Hubbell, and their confederates, caused an untrue statement
to be written into what purports to be the record book of said
Terminal Company, etc.," referring to the record of the meet-
ing of April 8, 1890; I wish you would state what, if anything,
you had to do with either preparing the record or its entry in
the record book of the Des Moines Union.

A. I had nothing to do with preparing the record or of its
entry upon the record books.

49. Q. What is the fact as to whether you attended the
meeting of April 8, 1890? A. Yes sir.

50. Q. I wish you would state what you had to do per-
sonally with preparing the amendments to the articles of in-
corporation of the Des Moines Union Railway Company that
were adopted at that time?

A. I had nothing to do with them further than to vote in
favor of the amendments.

51. Q. Please state, as far as you can remember, what, if
any, consideration you had given prior to the time of that
meeting, either to the necessity of those amendments or to
the form which they should take.

A. I had not had anything to do with those questions.

400 52. Q. These amendments were adopted April 8,
1890. Please state whether or not, if any claims were
at that time asserted under the contract of January 2d, 1882,
you had any knowledge of it, and if so, what knowledge you
had.

A. There was no claim asserted under the contract of 1882.

53. Q. I wish you would state whether you have any
recollection of either knowing, or anticipating, at the time
that these amendments were adopted, that it would at any time
be important to show that the contract of January 2, 1882, had
been rescinded. If so, what recollection have you in reference
to that matter? A. I have not any.

54. Q. Please state whether, in connection with this trans-
action, it was suggested by any one that the Des Moines Union

Railway Company was not the owner in fee of the terminal property which has been conveyed to it, and if so, by whom such suggestion was made, and what it was.

A. I am sure there was no such suggestion; I don't remember of any.

55. Q. Now, from the time you became president of the Des Moines Union Railway Company in 1892, down to the present time, what have you had to do with the acquisition of the property acquired by the Des Moines Union Railway Company during that period?

A. I have had something to do with every transaction.

56. Q. What have you had to do with the question of determining whether property should be acquired, the price to be paid for it, and so on?

A. The question of the necessity of purchase was generally decided by me, and the price to be paid was a question that was decided by the board of directors.

401 57. Q. Now, in connection with those purchases, were there conferences with the other directors or not?

A. Yes, sir.

58. Q. I wish you would state whether, in connection with any one of these transactions, it has ever been suggested to you by anybody—if so, by whom—and what the suggestion was—that there was a trust here, or that in taking the title the Des Moines Union should not take it absolutely, but should recognize some trust?

A. There was no suggestion at any time by any person that any trust existed; and the title to all the property acquired since I have been connected with the company has been a complete title, without any reservation in favor of any other person or corporation.

59. Q. When was it you first learned that it was claimed that the Des Moines Union was not the absolute owner of the terminal property?

A. The first intimation I had was when I read the complainants' bill.

60. Q. In what case? A. In the pending case.

61. Q. In this case? A. In this case.

62. Q. And that bill was filed when, do you remember?

A. In 1907.

63. Q. So that for about fifteen years or more before the bill was filed you had been president of the Des Moines Union Railway Company, and during the greater period before the bill was filed you had been vice-president and superintendent, and charged with the operation of one of the tenant companies, at least? A. Yes.

64. Q. Now, it is set up in Paragraph 15 of the bill that Frederick M. Hubbell, Frederick C. Hubbell, and their con-

federates, having made certain things to appear in Article III of the amended articles, proceeded with the issuance of the stock—I believe you have already said you had nothing to do with the preparation of the amended articles? A. Yes, sir.

65. Q. So far as you know, were you consulted with reference to them, or did you make any suggestions in reference to them?

A. I am quite sure I was not consulted, and am quite certain I made no suggestions.

66. Q. Now, it is said on information and belief that you and your father and your confederates caused a statement to be inserted in Article III that 2,000 shares of the Des Moines Union Railway Company stock should be issued to the Purchasing Committee, knowing that that statement was not and could not at the time be true. Did you at the time know or believe that that statement was not a true statement in the articles? A. I thought the statement was true.

67. Q. Now, it is also alleged there that you and your father and your said alleged confederates—pausing there for a moment; do you know, or have you any idea, who are referred to in the bill as “your alleged confederates”?

A. It must be the other directors of the Des Moines Union Railway Company.

68. Q. Do you know anybody else that had anything to do with the transaction?

A. No, there was no one else.

69. Q. Now, it is said you caused this statement that the Purchasing Committee owned the 2,000 shares to be inserted to conceal the sale of part of the stock to Frederick M. Hubbell. Is that true or not?

A. Oh, no; that is not true.

70. Q. It is also said that you had something to do with causing the preamble and the resolution to be adopted by the board of directors of the Des Moines & St. Louis April 8, 1890, in paragraph 16 of the bill, reciting that \$400,000 of the capital stock of the Des Moines Union had been issued as a part of its purchase price, and that the Purchasing Committee had sold to Frederick M. Hubbell one-eighth of it, and to Gen. Dodge one-eighth of it, and that the sales were ratified, confirmed and approved by the Des Moines & St. Louis Railway Company. What, if anything, did you have to do with the preparation of the records or the adoption of the resolution?

A. I had nothing to do with it or any part of it.

71. Q. There is a similar statement about a resolution adopted by the Des Moines & St. Louis Railway Company Feb. 11, 1891, relating to the second purchase by your father from

the Purchasing Committee. What, if anything, did you have to do with preparing the record, preparing the resolution, and the adoption of the resolution referred to?

A. I had nothing to do with any part of the transaction.

72. Q. I wish you would state who, if any one, there was at the time in question, who was interested, either in the Des Moines Union Railway Company or the Des Moines & St. Louis Railroad Company, who did not know all about these purchases made by your father?

A. All of the people interested in the properties were familiar with all of the transactions.

73. Q. Now, it is said that you caused similar resolutions to be adopted by the boards of directors of the Des Moines & Northwestern Railway Company, the St. Louis, Des Moines & Northern, or the Des Moines & Northern Railroad Company. What are the facts about that?

A. I don't recall anything at this moment with respect to that matter.

74. Q. Do you know whether such resolutions were ever adopted or not? A. No, I don't know.

404 75. Q. Did you have anything to do with their adoption, if they were adopted?

A. I can't remember a thing about it.

76. Q. At the time the stock was acquired from the Purchasing Committee, who did you believe owned it prior to making the same to F. M. Hubbell & Son, Gen. Dodge and F. M. Hubbell?

Complainants' counsel object to the question as immaterial.

A. I believe the Purchasing Committee of the Wabash owned it.

77. Q. Now, referring to the ratification agreement of July 31, 1897, I wish you would state whether in connection with that agreement you wrote to Mr. J. R. Ramsey, Jr., then vice president and general manager of the Wabash Road, the letter signed by F. C. Hubbell, dated February 18th, 1897, defendants' exhibit 368 shown in the stipulation of May 31st, 1911? A. Yes sir, I wrote that letter.

78. Q. Now the record shows various drafts of proposed contracts that were considered prior to the substitution for them of the contract that was signed July 31st, 1897, which is Plaintiffs' Exhibit 37, could you on referring to those proposed contracts state the points of difference as to which the parties were unable to agree? A. Yes sir.

79. Q. Will you please state what it was?

A. The Wabash people wanted the new contract to provide that the cost of maintaining the Union Station and the employees therein should be prorated among the tenant lines

upon the passenger car wheelage and they also wanted the expenses of the freight house including truckers, clerks &c. to be prorated on the basis of the number of tons of freight through the freight house.

465 80. Q. You have stated what the Wabash wanted, what was the attitude of the other tenant company?

A. The Des Moines Northern & Western Railroad Co., and the Des Moines Union desired that the expenses at the passenger house and also at the freight house be borne on the basis of the total wheelage of the Des Moines Union.

81. Q. And it was this difference that was not reconciled?

A. That was the reason we could not agree.

82. Q. And after this negotiation or effort to agree had been abandoned this ratification of the contract of July 31st, 1897, was signed? A. Yes sir.

83. Q. Now it is said in the bill that you and Mr. Frederick M. Hubbell caused to be inserted in the contract of 1897 a statement of the then ownership of the stock in the Des Moines Union Railway Co., what is your recollection, if you have any, about that?

A. The contract—I would like to look at the contract (referring to contract) the contract of 1889, section 24, recites that the Des Moines & St. Louis Railroad owns half of the capital stock of the Des Moines Union, and when we came to make a ratification of the contract of 1889 in the year 1897, the stock ownership had changed, and the recitation in the ratification contract of 1897 was made to correctly state the then ownership of the stock in the Des Moines Union Railway Co.

84. Q. Now, it is said that these things were carefully concealed from the complainants, is that true?

A. No sir.

85. Q. Have you looked through these proposed contracts that were under consideration from early in February, 1897, until July, to see whether each draft furnished to the other parties contained this statement in substance, as to the
466 stock ownership?

A. I don't remember that at this time.

86. Q. Now, you, at this time, were a director, vice president and superintendent of the Des Moines Northern & Western Railroad Co. of which the Chicago, Milwaukee & St. Paul Railway Co. acquired its stock in the Des Moines Union, were you not? A. Yes sir.

87. Q. Was any effort made to conceal this from that company? A. No sir.

88. Q. This was some seven years after the stock had been purchased from the Purchasing Committee, was it not?

A. Yes sir.

80. Q. Now it appears that at a meeting of the Des Moines Union Railway Co., held October 4th, 1893, F. M. Hubbell stated to the board of directors that 2500 shares of the stock had been transferred by the Des Moines Northern & Western Railway Co. to F. M. Hubbell & Son, and asked the consent to that transfer and that the directors granted it. It also appears that at a meeting of the Des Moines Union Railway Co. on January 25th, 1894, F. M. Hubbell & Son were present representing this 2500 shares of stock, all of the stock being present, and I think it also appears that at each subsequent meeting up to 1897 this stock was present and was voted by F. M. Hubbell & Son; now, who was there in view of this record that had any interest in this matter from whom this could have been concealed in 1897, as far as you know?

A. I cannot imagine any method by which it could have been concealed, and furthermore there was no effort or reason for its concealment.

89. Q. There is a good deal of correspondence in this stipulation of May 31st, 1911, between yourself and the
407 officers of the Wabash Co. with reference to the Carbondale traffic, where was Carbondale?

A. The Carbondale property is mining property and it lies immediately east of the present city limits of Des Moines, say two miles east of the eastern terminus of the Des Moines Union Railway.

91. Q. That means two miles east of the old city limits?

A. Yes sir, two and a half.

92. Q. And what is the fact as to whether this property was accessible over the line of the Wabash Co.?

A. Yes sir.

93. Q. Please state whether or not the earnings which the Des Moines Union Railway Co. received on account of this Carbondale traffic are part of the so-called surplus earnings?

A. Yes sir.

94. Q. Now, there has been some property exchanged between the Des Moines Union Railway Co. and the Chicago, Rock Island & Pacific Railway Co. within recent years, has there not? A. Yes sir, quite a little.

95. Q. And under this exchange the Des Moines Union decided some property to the Rock Island and the Rock Island decided some to the Des Moines Union?

A. Yes sir.

96. Q. And there has been an exchange of property between the Des Moines Union and the Des Moines Western Co.?

A. Yes sir.

97. Q. In those instances there was a deed by the Des Moines Union to the Des Moines Western, and a deed by the Des Moines Western to the Des Moines Union?

A. Yes sir.

98. Q. What is the fact as to whether each of those exchanges was made after a conference with the other directors of the Des Moines Union and with their approval?

A. Yes sir.

99. Q. Please state whether or not in each instance the property conveyed by the Des Moines Union included some property which was devised to it in connection with the original acquisition of the terminal property in 1887 and 1888? A. That is correct.

100. Q. Please state what, if anything was suggested by anyone in connection with these transactions as to this property being subject to a trust?

A. There was no suggestion by anyone that there was any trust estate in any of this property.

101. Q. What, if any, knowledge did you have as to any claim that any of this property was subject to a trust at the time you executed and delivered these conveyances?

A. I knew of no trust or claim of trust.

102. Q. Now, during the time that you have been president of the Des Moines Union Railway Co., I wish you would state whether either of the tenant companies, including the complainants and their predecessors, has paid any amount to the Des Moines Union Railway Co. aside from the payments under the contract of May 10th, 1889, as ratified?

A. No sir.

103. Q. Now, in earlier periods when the company was hard up for cash how were the funds secured to pay for property which it purchased and to pay for additions which were made to the railroad?

A. When the company was in need of funds for improvement the Des Moines Union asked the Wabash, and the Des Moines, Northern & Western or its predecessors, to advance money to the Des Moines Union to make improvements, and at frequent periods the Des Moines Union would settle those accounts by paying to the Wabash and the Des Moines, Northern & Western and its predecessors bonds of the Des Moines Union Railway Co. at par, with one exception, I think in one case the Des Moines Union sold its bonds to the two companies at 97 per cent.

104. Q. Now, was any money raised in any other way?

A. On several occasions when the Des Moines Union bought property, it would buy it subject to a mortgage which it would assume.

105. Q. Were there any cases where F. M. Hubbell & Son advanced money to be repaid out of rents, such as that?

A. Yes, sir, a number of instances where F. M. Hubbell & Son would advance money to build buildings upon the property of the Des Moines Union and collect the rents from the buildings until such time as the rents would reimburse F. M. Hubbell & Son for the advances.

106. Q. What necessity was there for buildings?

A. The buildings were constructed to enable us to secure industries on the Des Moines Union tracks.

107. Q. Then they were for the use of tenants who would furnish traffic, produce traffic?

A. Yes sir, it was for the purpose of producing traffic, securing traffic.

108. Q. Now, what was the fact as to whether in some instances, bonds were issued directly in payment for property?

A. Yes, there were several cases where the Des Moines Union issued its bonds to the people from whom it purchased property.

109. Q. Now, the bill in this case refers to a contract made between the Chicago, Milwaukee & St. Paul Railway Co. and F. M. Hubbell & Son, and their associates, whereby F. M. Hubbell & Son and their associates gave to the Chicago, Milwaukee & St. Paul Railroad Co. 40 per cent of the stock of the Des Moines Northern & Western Co. in consideration of a traffic contract, this contract being Exhibit Q. to the bill; were you familiar with this transaction?

A. I was familiar with it, yes.

110. Q. What, if anything, did you have to do personally with negotiating the contract?

A. I do not think I was ever present at any of the meetings.

111. Q. What was it that induced F. M. Hubbell & Son to turn this stock over to the Chicago, Milwaukee & St. Paul Railway Co. and to give it an option for additional stock at a nominal amount, by the acquisition of which it might secure control of this railroad?

A. The Des Moines Northern & Western and Chicago, Milwaukee & St. Paul had been interchanging their freight business on a basis of division of 50 and 50, and the Chicago, Milwaukee & St. Paul cut the division to 25 per cent to our company and 75 per cent to the other company, and that reduced our earnings so much that our company could not live, and in order to get a better division for our company we and our associates gave to the Chicago, Milwaukee & St. Paul—made the contract in question.

112. Q. Now, there are some averments in the bill about this foreclosure that this contract contemplated, and F. M. Hubbell & Son saying they were unable to secure the assent of the bondholders to a reduction in the interest. So far

as you know did you have any personal connection with that transaction? A. No sir.

113. Q. Have you any recollection in reference to it?

A. Very little, nothing but a vague recollection.

114. Q. What is the fact as to whether you personally took part in the transaction by which 2500 shares of the Des Moines Union Railway Co., were first pledged by the Des Moines Northern & Western Railway Co. to F. M. Hubbell & Son as collateral security, and afterwards transferred to F. M. Hubbell & Son absolutely?

A. Yes sir, I was present at both of those meetings of the directors.

115. Q. I wish you would state whether the record of those two meetings which have been introduced one of October, 1893, and the other one of January, 1894, both of them meetings of the directors of the Des Moines, Northern & Western Railway Co., correctly show what the real transaction was?

A. Yes sir.

116. Q. At the time the stock was pledged as collateral to F. M. Hubbell & Son and at the time it was transferred absolutely to F. M. Hubbell & Son, state whether or not the Chicago, Milwaukee & St. Paul Railway Co. had any interest whatever, either as stockholder or otherwise, in the Des Moines Northern & Western Railway Co. or its property?

A. They had no interest of any description in the Des Moines Northern & Western Railway.

117. Or its property?

A. Or its property at either of those dates.

118. Q. Will you state what services you have performed for the Des Moines Union Railway Co. since 1892 when you became president?

A. I performed all of the duties usual to the office which I held, and have had direct oversight of the improvement of the property, building additions to it, purchasing all the material, supervising every expenditure that the company made and have had to do very largely with the negotiations the company has had with its numerous tenant roads and with the public of the City of Des Moines, State of Iowa.

119. Q. What have you had to do with reference to the maintenance of the property and purchase of equipment? A. That has all been under my jurisdiction.

120. Q. What, if anything, have you had to do with the negotiations of the various leases which the company has with other companies?

A. I have taken part in all of those negotiations.

121. Q. Putting it generally, I wish you would state whether any expenditures made by the company or contracts made by the company are not made under your supervision?

A. I think I can say there are none, no purchases made that do not come under my supervision, and at this moment I do not think of any contract of any material amount that does not come directly under my supervision.

122. Q. Take the matter of development of the property, getting new industries, extending its tracks, acquiring real estate, and all that, what is there that you have had to do in that connection?

A. I am the one who has given that the most attention.

123. Q. Take the matter of its relation with other roads, other than the tenants, have you had anything to do with that?

A. Yes sir.

124. Q. How about matters such as negotiations for the exchange of property with the Rock Island that has been referred to? A. I took part in that.

125. Q. What have you received in the way of compensation for your services rendered to the Des Moines Union Railway Co.?

A. I have never received any salary in all the 21 years that I have been its president.

125. Q. What payments have been made to you of any kind on account of those services?

A. Not anything.

413 127. Q. What has induced you to give this time to this property?

A. Because of my stockholding interest in the property.

128. Q. What is the fact as to whether you would have done this if you had not believed the Des Moines Union Railway Co. was the owner of the property?

A. I certainly would not have given up 21 years' time to it.

129. Q. Now, during this period, so far as you know, has there been any complaint by any one as to the way in which the property has been managed and developed? A. No sir.

130. Q. Has it been suggested by anyone at any time that the Des Moines Union has not been neutral between its various tenants where their interests were conflicting?

A. No, there has been no complaint that the company and its officers have not been neutral.

131. Q. What, if anything, has F. M. Hubbell & Son done in the way of making investments on reliance on their interests as stockholders in the Des Moines Union Railway Co.?

A. We have bought a very considerable amount of property adjoining the Des Moines Union and built and improved the property, establishing industries that would increase the shipping over the Des Moines Union.

132. Q. And what success have you had in establishing industries in Des Moines on the Des Moines Union track?

A. When I went with the Des Moines Union Railway Co. in 1892 there were scarcely any industries producing freight upon our tracks, the other roads having mostly all of the principal industries, and we have succeeded in changing this so that now the larger part of the shipping business is done on the Des Moines Union tracks.

414 133. Q. State whether or not you would have done this had it not been for your belief that the Des Moines Union owned this property and your stock in that company was of value? A. We certainly would not have done it.

134. Q. What has F. M. Hubbell & Son done with reference to acquiring real estate and holding it for the company and later turning it over to the company?

A. Whenever we have found opportunity to buy real estate adjoining the Des Moines Union at a low price we have bought it and carried it and whenever the Des Moines Union has needed it we have sold it to the Des Moines Union at cost and carriage.

135. Q. Now, there are some statements in the answer here with reference to the purchase by F. M. Hubbell & Son of this Des Moines Union stock; I wish you would state whether or not you would have purchased that stock if you had not believed that the Des Moines Union Railway Co. was the owner of this property and the stock had a present or potential value?

A. We certainly would not.

136. Q. I believe you have stated that it was in 1890 you first became a director? A. Yes sir.

137. Q. Now state whether or not at that time and thereafter you believed that the Des Moines Union was the absolute owner of the terminal property?

A. I believed then and believe now that it is.

138. Q. Now, we have referred to the Des Moines & St. Louis Railroad Co.; did that company ever operate a railroad? A. No, not to my knowledge.

139. Q. And has that company to your knowledge done any business since, say, 1899?

A. Not to my knowledge.

415 140. Q. Now take the Des Moines Northwestern Railway Co., state whether that company ever operated a railroad? A. No sir.

141. Q. And how long is it since the Des Moines & Northwestern Railway Co. has operated a railroad?

A. About 1891.

142. Q. How long is it since the St. Louis, Des Moines & Northern Railway Co. has operated a railroad?

A. Since 1889, or 1890.

At this point a recess was taken until 2 P. M. at which time the taking of depositions was resumed as follows:

- 416 Frederick C. Hubbell, in continuation of his deposition, testifies as follows:

Cross-Examination

By Mr. Minnis:

1X. Q. How many shares of stock do you own in the Des Moines Union Railway Co.?

A. Our firm, Hubbell & Son, owns 2500 shares.

2X. Q. Out of a total of how many?

A. Out of a total of 4,000. shares.

3X. Q. What interest do you have in the firm?

A. We are equal partners.

4X. Q. Do you hold any office in the Des Moines Terminal Co.? A. No sir.

5X. Q. Or the Des Moines Western? A. No sir.

6X. Q. Have you any interest in those companies?

A. I have an interest in both of them.

Defendants' counsel object to this as not cross-examination.

7X. Q. I am referring now to the part of your testimony in which you testified you had not received any compensation or salary from the Des Moines Union Railway Co. during the time you were its president. I understood you to say the reason why and the only reason why you did not ask anything for your services as an officer of the Des Moines Union Railway Co. was that you were interested in the stock of the company? A. Yes sir.

8X. Q. Did the company pay any dividends during the time you were president of it? A. No sir.

9X. Q. Did you or your father or together as a firm own and deal in real estate located near the lines of the Des Moines Union?

A. Yes sir, F. M. Hubbell has bought considerable
417 lands along the Des Moines Union and I have also. I am a trustee in his estate.

10X. Q. Well, didn't you and your father make a large sum of money in those real estate transactions?

A. The real estate which we have bought and held I think has gone up in value very considerably.

11X. Q. You have made plenty of money out of that that you have sold, haven't you?

A. I do not recall ever having sold any at a loss, because property has always advanced in Des Moines, I mean as a general rule.

12X. Q. It was of great advantage to you and your father to have control of the management of the company, was it not?

A. I presume it was some advantage, although I had never thought about it, certainly not enough to warrant one working for the company for love for 20 years, if that is the point you are trying to make.

13X. Q. It looks to me like you must have been working for love, because the contract of 1889 entitled the Wabash and St. Paul to use the facilities at cost, did it not?

A. I don't think it is that way; I would have to refer you to the contract.

14X. Q. As a matter of fact the ownership of stock in the company is no reason why you should not have a salary, if you had asked it?

A. I have asked it and they have said, what we were making out of the stock was sufficient compensation, and we ought not to ask that.

15X. Q. Who said it? A. The directors.

16X. Q. Tell me one? A. Mr. Hays and Mr. Ramsey.

17X. Q. When did you make a request of that kind?

A. I made it a great many times.

418. 18X. Q. Can you name anybody else to whom you made a request for salary?

A. No, I don't think of any one just now.

19X. Q. You mean to say that the mere circumstance that you and your father owned 2500 shares of stock was the cause of your working for the company without compensation?

A. Sure.

20X. Q. If you had been paid a salary by the Des Moines Union Railway Co. it would have been reimbursed by the railroad companies, would it not, under the contract?

A. I think so the way I would interpret the contract.

21X. Q. You stated that you did not hear any one set up the claim, either the complainants or their predecessors, to the right to use the Des Moines Union Railway Co.'s property under the contract of 1882; did you ever hear the rights of the complainants under the contract of 1882, discussed at any time?

A. No, not until they came into this suit.

22X. Q. Did you have any discussion or dispute with any one with respect to the ownership of the property that is operated by the Des Moines Union Railway Co.?

A. No sir.

23X. Q. That matter was never the subject of discussion was it? A. No, not in my presence.

24X. Q. Do you know who prepared what purports to be the record of the proceedings of the meeting of stockholders of the Des Moines Union Railway Co. held January 3rd, 1890?

A. This moment I do not know who prepared them.

25X. Q. I do not mean who actually wrote them—

A. I know who wrote them.

26X. Q. Do you know who prepared them?

A. I would only have a surmise, I did know at that time.

27X. Q. Did not A. B. Cummins prepare them?

A. That would be my surmise.

419 28X. Q. Do you know who prepared what purports to be the record of proceedings of the stockholders' meeting of the Des Moines Union Railway Co. held February 18th, 1890?

A. At this time I do not remember distinctly, but surmise that Mr. Cummins directed the different directors in the matter. He was present at the meeting.

29X. Q. Do you know who prepared what purports to be the record of the proceedings had at the meeting of the meeting of the stockholders of the Des Moines Railway Co. on April 8th, 1890 at which the articles of incorporation of the Des Moines Union Railway Co. are alleged to have been amended?

A. I can't remember at this time who prepared them; my surmise is they were prepared by Mr. Cummins.

30X. Q. Were you president or vice president of the Des Moines Union Railway Co. in 1894?

A. I was president in 1894.

31X. Q. Are the properties of the Des Moines Terminal Co. and Des Moines Western operated separate from the Des Moines Union Railway Co.?

A. Yes sir, separate corporations.

32X. Q. Who supervises the operation of those two companies? A. Mr. C. H. Hueston.

33X. Q. Who is president of those companies?

A. F. M. Hubbell.

34X. Q. Do you have separate motive power?

A. The Des Moines Western is handled by its own arrangement which it makes with its tenants; the Des Moines Terminal is handled by engines of the Des Moines Union Railway Company.

35X. Q. Who maintains the property of the Des Moines Terminal? A. The Des Moines Terminal Co.

36X. Q. Do you use the same employees?

A. No sir.

37X. Q. Do you use the same crews in switching?

A. Yes sir.

420 38X. Q. Who pays for those crews?

A. The Des Moines Union pays for all its employees, and, of course, when on the Des Moines Terminal tracks the Des Moines Terminal pays for those crews.

39X. Q. You really have charge of the management of the three terminals' property?

A. I have very little to do, have nothing to do with the Des Moines Terminal and Des Moines Western.

40X. Q. The Des Moines Union Railway Co. has a superintendent? A. Yes sir.

41X. Q. Who has active charge?

A. Mr. J. A. Wagner has charge of it.

42X. Q. And you mean by saying that the affairs of the company are conducted under your supervision that you are president of the company and that naturally the persons who are in active operation of the property are under your supervision?

A. I did not say that. I stated very clearly that I am in charge of that property, I know all about it, manage it, buy all the material, I decide on the location of every track, side tracks and main line, changing of the tracks, everything in reference to the details of this business.

43X. Q. Who employs and discharges employees?

A. Generally Mr. Wagner, although he generally refers to me before discharging a man.

44X. Q. Who directs the crews? A. The yard master.

45X. Q. Under whose immediate supervision is he?

A. The superintendent's.

46X. Q. You do not actively look after the operations?

A. I think I do.

47X. Q. The movements of engines and switches?

421 A. I do not switch cars or handle engines.

48X. Q. Nor do you direct the yardmaster?

A. Sometimes I have occasion to direct the yardmaster, not very often.

49X. Q. You do not manage the organization, go into great detail in its operation?

A. Yes, I am very familiar with the details of the company.

50X. Q. Your crews, you see they are out on time?

A. No sir.

51X. Q. I understood you did see the daily repairs, see what repairs are made? A. Yes sir.

52X. Q. Do you keep the time of employees?

A. No, I do not keep the time of employees.

53X. Q. You do not keep the books of the company, do you? A. No sir.

54X. Q. You have other important business interests that you devote time and attention to?

A. I have other business that takes some time, yes sir.

55X. Q. Do you recall signing a report to the Executive Council of the State of Iowa, for the year ending January 1st, 1892. A. No sir.

56X. Q. You do not recall whether you signed such a report or not? A. No sir.

Mr. Minnis: In connection with your testimony and the other map that you agreed to prepare when your father was on the stand I wish you would prepare a map of the property owned by you or your father, located in the vicinity of either one of the three terminal properties; could you prepare such a map as that?

The Witness: Would one of the city maps be correct enough?

Mr. Minnis: Yes.

Mr. Guernsey: I will prepare and submit some sort of a map that I think will be satisfactory.

422 Mr. Cook: With a list of the industries located on your property.

Mr. Minnis: I would like to have a list of the industries on each of the lines.

Redirect Examination

By Mr. Guernsey:

143. Q. You testified on cross-examination, that the Des Moines Union runs its switch engines with its own crews on to the tracks of the Des Moines Terminal Railway?

A. Yes sir.

144. Q. That is for the purpose of switching cars?

A. Yes sir.

145. Q. Who gets the pay for switching cars?

A. The Des Moines Union Railway Co. gets \$2. and the Des Moines Terminal gets \$1.

146. Q. Who built and who maintains the Des Moines Terminal?

A. The Des Moines Terminal Co. built it and maintained it.

147. Q. Does the Des Moines Union Railway Co. pay to the Des Moines Terminal Co. anything on account of this switching business that has been referred to or on any other account except the \$1. a car? A. That is all.

148. Q. Do the engines or crews of the Des Moines Union go on the tracks or have anything to do with the business of the Des Moines Western? A. No sir.

149. Q. There has been some talk about the appreciation of real estate here, I wish you would state whether the Des Moines Union property has appreciated more rapidly than other real estate in the business part of Des Moines during the same period?

A. I don't think it had appreciated as rapidly as property in the business portion of Des Moines, covering this same period of time.

423

Deposition of A. B. Cummins, Filed April 24, 1911.

424 In the Circuit Court of the United States Southern
District of Iowa, Central Division.

Chicago, Milwaukee & St. Paul Railway Company, and Wabash
Railroad Company, Complainants,
vs. In Equity.

Des Moines Union Railway Company, Frederick M. Hubbell,
Frederick C. Hubbell, and F. M. Hubbell & Son, Def-
endants.

It is hereby stipulated that the deposition of Albert B. Cummins may be taken on behalf of the Defendants, at Des Moines, on March 23, A. D. 1911, before J. P. Blaise, a Notary Public in and for Polk County, Iowa, and that said deposition may be taken by him in short hand, and when so taken by him shall be transcribed, and when certified by him to be a full, true and correct transcript of the said deposition, shall be filed in the above entitled cause as the deposition of the said witness, both parties waiving informalities in the taking of the said deposition, and waive the signing of said deposition by said witness.

Cook, Hughes & Sutherland, and E. R. Mason, J. L. Minnis and Wells H. Blodgett, Attorneys for Complainants.

Guernsey, Parker & Miller, Attorneys for Defendants.

Deposition of witness, produced, sworn and examined, in pursuance of the above stipulation, at Des Moines, in the County of Polk and State of Iowa, before me, J. P. Blaise, a Notary Public in and for Polk County, Iowa, in the above entitled cause, on behalf of Defendants.

425 ALBERT B. CUMMINS, being duly sworn on the part of Defendants, examined in chief by N. T. Guernsey, Esq., testified as follows:

Int. 1. State your name, age, place of residence and occupation?

A. My name is Albert B. Cummins; I am 61 years of age; I live in Des Moines, Iowa, and by profession I am a lawyer, although I have not been engaged in the actual practice in recent years.

Int. 2. How long have you been a citizen of Des Moines, approximately?

A. Thirty-three years.

Int. 3. As shown by the records of the various corporations about to be referred to, it appears that you were a director of

the Des Moines Union Railway Company from 1888 until 1902, and that you were Vice-President of that Company from 1891 to 1897; that you were a director of the Des Moines & St. Louis Railroad Company in the years of 1890 and 1891, and that from the election in 1891, you held over until another election was held in January, 1897, there being no election in the mean time; that you were a director of the St. Louis, Des Moines & Northern Railway Company, in the years 1889 and 1890, and Vice-President of that Company during the same years; that you were a director of the Des Moines & Northwestern Railway Company, during the years, 1889 to 1892, and were Treasurer of that Company in 1892; and that you were a director of the Des Moines Northern & Western Railway Company from December, 1891, until January, 1896, and a director in the Des Moines Northern & Western Railroad Company, from 1896 until the election of Directors in 1899, including the year, 1898. Are you willing to accept this statement as a substantially correct statement of the relations which you sustained to these various companies at the times mentioned?

A. I know in a general way that the statements you made are substantially correct. I cannot, of course, recall the dates of my promotion to office in these various companies; but I think it is correct.

Int. 3. Now, during the period that you were an officer or director of these various corporations, were you also counsel for each of them, practically the same period?

A. The firm of which I was a member at that time, were the local attorneys for, what in a general way may be called the Wabash companies, including the Des Moines & St. Louis Railroad Company. I was General Counsel for the Des Moines Union Railway Company, for the Des Moines & Northwestern Railway Company, for the St. Louis, Des Moines & Northern Railway Company, and sustained professional relations to others who were connected with those various companies.

Int. 4. The record of the Des Moines Union Railway Company shows, that at a stockholders' meeting that was held on the 8th of January, 1889, you, on behalf of the Wabash, St. Louis & Pacific Railway Company, and of the Wabash, Western Railway Company, nominated Chas. M. Hayes, W. B. Blodgett, James F. How, and A. B. Cummins, as directors of that Company, on behalf of the Wabash Western Railway Company; was that action on your part taken at your own instance, or at the suggestion of some one else, if so, can you tell us at whose suggestion?

A. It was taken at the suggestion or direction of the Wabash interests. I do not remember the person who gave me

the direction, or who asked me to do it. I know this, not from a distinct recollection with regard to the transaction, but because of the fact that I seem to have nominated the directors who were to represent, under the old articles of incorporation, the Wabash interests.

427 Int. 5. A contract made between the Des Moines Union Railway Company, the Des Moines & Northwestern Railway Company, the Des Moines & St. Louis Railroad Company, and the St. Louis, Des Moines & Northern Railway Company, approved by the Wabash, St. Louis & Pacific Railway Company, dated May 10, 1889, has been identified as plaintiffs' exhibit No. "27", in the stipulation of the parties filed March 23, 1911. What, if anything, did you have to do with the negotiation of this contract?

A. As I remember it, I had nothing to do with the negotiation of the contract, which was prepared by Col. Blodgett. I remember of having become familiar with the contract before it was executed or approved finally.

Int. 6. This contract that you were familiar with before it was executed, was something that was constantly before you while you were connected with the Des Moines Union Railway Company; was it not?

A. Yes, sir; from the time it became a contract between these parties it was before me all the while in examining the affairs of the Company.

Int. 7. I wish you would state, whether so far as you know, either in connection with the execution of the contract, or in connection with the other matters which arose under it while you were connected with the Des Moines Union Railway Company, it was suggested by any one, that the Des Moines Union Railway Company was not the owner of the property which was the subject of this contract?

Mr. Minnis: We object to that question, first, for the reason that the Des Moines Union Railway Company, by 428 its president, Mr. Hubbell, filed, pursuant to the laws of Iowa, statements with the Secretary of State, verified by affidavits, that the Des Moines Union Railway Company did not own any property, but was an agency company, and by these statements to the state of Iowa, the defendant, Hubbell, and the Des Moines Union Railway Company are now estopped from asserting that the Des Moines Union Railway Company at that time owned the property. And for the further reason, that whether the Des Moines Union Railway Company owns property or did own property, is dependent upon the contracts and documents relating to the title of the property it has operated and those writings cannot be changed by oral testimony.

And further, that whether the witness heard any one assert that the Des Moines Union Railway Company did not own the property it has operated, is immaterial, and does not tend to prove any issue in the case.

A. I never heard any suggestion from anybody connected with the property or the proceedings, that the Des Moines Union Railway Company was not the owner of the property referred to. This, however, does not cover the suggestions that I myself made to persons who were interested in these companies concerning the title to the property at the time I was engaged in preparing certain amendments to the articles of incorporation, and before that time. My answer is intended only to relate to suggestions made by any other person with whom I was connected, than myself.

Int. 8. Passing to the matter of the amendment to the articles of incorporation, it appears that at a meeting of the stockholders of the Des Moines Union Railway Company, held January 3, 1890, this contract which I have just referred to as Exhibit "27" in the stipulation mentioned, was approved, and at the same time a motion was adopted at the suggestion of Mr. James F. How, referring to yourself and Col. Blodgett the questions concerning the issue of stock for the purchase price of the terminal property, as well as amending the articles of incorporation. It is the amendments that were made as the result of this action that you refer to in your last answer, I assume? A. It is.

Int. 9. Will you state now what the suggestions were when you have referred to in the former answer, that you made relative to the title to this property in connection with this matter of amending the articles of incorporation of the Des Moines Union Railway Company, or leading up to it?

Mr. Minnis: I will object to the question, if it is complete, on the ground, that suggestions that he may have made, to be competent, would necessarily have to be made to somebody.

Mr. Guernsey: I will add this to the question: Also state to whom the suggestions were made?

A. The suggestions I made began very soon after I became the counsel for the Des Moines Union Railway Company, and while I cannot recall the dates or places, I know that I made them at the meetings of the directors, meetings of the stockholders, and individually to everybody who was connected with the Des Moines Union Railway Company, or those companies which were then called the tenant companies. In order to answer the question intelligently, it seems to me it would be necessary for me to state the situation as I recall

it, because that situation was the subject of repeated conferences and conversations with these various representatives of these several companies.

430 Mr. Minnis: We reserve the right, and it is understood that we shall have the right to move to strike out any part of the witness' testimony at the conclusion of the examination in chief.

Mr. Guernsey: Certainly.

Ans. Cont'd: In the first part of the year 1890, and before that but after I had become thoroughly familiar with the affairs of the Des Moines Union Railway Company, this is the way in which it was presented to me: first, as to the tenant companies, the Des Moines & St. Louis Railroad Company had practically passed out of existence. It was the owner of one-half of the capital stock of the Des Moines Union Railway Company at that time.

Mr. Hughes: Is this what you told the stockholders?

A. I am not pretending to repeat what I told the stockholders. I am stating the situation as it appeared then to me, and that situation I discussed with all the people connected with this company at various times, and it was that situation which led up to the proposition, on my part, to amend the articles of incorporation. I made that proposition, and the title to the property was one of the phases of the proposition. I have already said, the Des Moines & St. Louis Railroad Company was practically out of existence; it was the nominal owner of one-half the capital stock in the Des Moines Union Railway Company, except as that title had passed to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company; and the original articles of incorporation specifically provided that certain interests were to nominate a certain number each of directors. The Des Moines & Northwestern Railway Company had purchased, as I remember it, of the Purchasing Committee, at the time it became the owner of its road, a one-quarter interest

431 in the stock of the Des Moines Union Railway Company; it was in trouble; that is to say, it was finding great difficulty in making its revenue meet its expenses; nobody knew what was ahead for that company. The St. Louis Des Moines & Northern Railway Company was also the owner, from the beginning, as I remember it, of one-quarter interest in the stock of the Des Moines Union Company. It likewise was on the verge of bankruptcy; it was impossible to predict with any certainty what would become of it, or of its interest in the Des Moines Union Company. And this situation presented, as I thought, a very serious question, because the

original articles of incorporation provided, if I may be permitted to read from them, because I am very familiar with them, as follows:

"Four members of the Board shall be nominated by the Wash, St. Louis & Pacific Railway Company, two members by the Des Moines, Northwestern Railway Company, and two members by the St. Louis, Des Moines & Northern Railway Company, and no stockholder shall be eligible for membership of the Board unless so nominated. The fact that a candidate has been duly nominated shall be certified to the stockholders meeting of this Company by the secretary of one of the respective Companies aforesaid, and such certification shall be conclusive. The provision herein with respect to nominations for the Board of Directors shall apply to and be enjoyed by any grantee or assignee of either of the railway companies aforesaid."

I knew at that time that negotiations were pending between Mr. Hubbell and the Purchasing Committee for the purchase of a part of the one-half of the capital stock then held by the Purchasing Committee. The Purchasing Committee seemed to be anxious to dispose of a portion of this stock, and
432 looking forward to the conduct of the Company in the future, it seemed to me that a readjustment of that phase of the articles of incorporation I have referred to was absolutely necessary. More than that, it was discussed among all these people that, inasmuch as the project of the union depot had been brought into existence, it was hoped that all the railroads in Des Moines could be brought into these terminals; that it would be very wise to have it so arranged that each railroad that might come into the depot in the future might become the owner of one-eighth of the capital stock. I thought that hope or expectation could never be realized without an amendment to the articles of incorporation, as it is evident that it could not be. Moreover the original articles provided for a capital stock of one million dollars, and as I understood these articles, that stock was to be issued as a part of the purchase price of the property. The articles had been subsequently amended so as to increase the capital stock to two million dollars, and in that amendment it was specifically provided that the board of directors might receive in payment for this stock the property which had theretofore been conveyed—speaking of theretofore, at the time I made these suggestions to the Des Moines Union Railway Company.

I was always somewhat opposed to issuing capital stock without consideration and I did not believe that the property was

worth any such amount and that to issue it in that way would impose, if disaster should come, a liability upon its owners and would frustrate in a measure the hope [—] getting into this Des Moines Union Railway Company as stockholders as many of the railroads entering Des Moines as could be brought in. This was the standpoint as viewed, I thought, by the stockholders. But from the standpoint of the Des Moines
433 Union Railway Company the situation was even more complicated and unsatisfactory.

And now I come to the specific answer to the question that was put to me. The Des Moines Union Railway Company was ignoring entirely, as it seemed to me, both as to ownership and as to management, the contract out of which the Des Moines Union Railway Company grew, namely, the contract of 1882—I don't recall the exact date—it had abandoned the terms of the contract as to title of the property and as to method of operation and management.

Mr. Minnis: I object to the testimony of the witness because he is testifying to conclusions and not facts. Whether the Des Moines Union or anybody else violated a contract depends upon the terms and meaning of the contract and the act of the parties.

Answer continued: If I may be permitted to say, I am testifying to the substance of what I told these people and told all of them. The Des Moines Union was ignoring the articles of incorporation, which in themselves, as I thought then and said then, were inconsistent with the contract of January 1882. I told them that the contract provided for a title of the property in trust for the three companies which had signed it and for the joint use and occupation limited by Farnham Street in the west part of the city, and the Company was claiming to own and operate a property extending to the west border of the city, and in the contract the Des Moines and St. Louis Railroad Company, the Company that had really no active functions, was charged with certain management and control of the property, and the other companies were required to pay to it whatever sums they were obligated to pay for the use of the property. And furthermore the contract and the articles
434 seemed to contemplate in certain very important matters that there should be a formal preliminary approval by three independent companies before it could take action.

The substance of it was that I said, that in view of the original articles, in view of the conveyances that had been made to

the Des Moines Union Railway Company of the property which was originally in the names of Gen. Dodge and Mr. How, both individually and as trustee, and possibly some in the name of one of these other companies or both of them, and that the Des Moines Union Railway Company had paid in its bonds for the original outlay for this property and had provided in its articles for the issuance of capital stock for the remainder of the purchase price, if any, that it was imperative to clear up the title and get rid of any question of doubt respecting the ownership of the Des Moines Union Railway Company and its right to manage its own property. These were the reasons which led up to my suggestion that there ought to be an amendment to the articles of incorporation that would put this Company beyond any question in the ownership and the control of its property just as any other corporation would be, leaving the interests which had been created in favor of the Des Moines & St. Louis Railroad Company and the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company to be represented by the stock as in the case of other corporations, and the only suggestion that I ever heard from anybody in all my connection with any of these companies regarding the title to the property was the suggestion that I made myself arising out of the circumstances that I have stated.

Int. 10. Did you as a matter of fact prepare a draft of the proposed amended articles of incorporation that were
435 finally adopted April 8, 1890?

A. I did.

Int. 11. I wish you would state whether the following is a letter which you wrote to Col. Blodgett on January 22, 1890, after this first draft had been prepared by you, the letter being as follows:

"Jan. 22nd, 1890.

"Wells H. Blodgett,

Gen'l Sol'r Wabash Railroad Co.,

St. Louis, Mo.

Dear Sir,—

At the last annual meeting of the stockholders of the Des Moines Union Railway Company, I suggested to those present several matters, in which, in my opinion, the articles of incorporation of the Company ought to be amended. Upon this there was a resolution offered and adopted, appointing you and myself a Committee to re-draft these articles, and present our changes to a meeting of the stockholders on the 18th of February. I have made a draft of amended articles thinking it would save time to be able to present something tangible to you whenever we could get together. I regard the

matter as an important one, and a change as absolutely necessary for the proper conduct of the Company. We shall have to hold a consultation in regard to the matter within a short time, and I write to ask you when and where this consultation shall be held. If you desire me to come to St. Louis, I will endeavor to do so, if you can fix a day sometime three or four days in advance of the time you write. Be good enough to give me an early reply and oblige.

Yours very truly,

(Signed) A. B. CUMMINS."

436 A. This is a copy of a letter I wrote to Col. Blodgett on the 22nd of January, 1890. I only know it is a copy because I have recently, in order to prepare myself for this examination, read the copy as it appears in my letter-book of that date.

Int. 12. Now, can you say whether or not prior to this meeting of April 8, 1890, the draft of the amended articles of incorporation as it was adopted at that time was submitted to Col. Blodgett as the representative of the legal department of the Wabash interests, and can you say whether you had any conference with him or with the Wabash people with reference to it?

A. It was submitted to Col. Blodgett and I had a conference with him, possibly more than one. I also discussed the matter with Mr. Hays.

Int. 13. Was Gen. G. M. Dodge at that time interested in either of these railroads that were using this terminal; if so, which one?

A. Gen. Dodge was commonly supposed to be the owner substantially of the St. Louis, Des Moines & Northern. And I desire to say here I was his personal attorney in this part of the country, as well as the attorney for the St. Louis, Des Moines & Northern.

Int. 14. I ask you whether you wrote to him on January 27, 1890, a letter relative to this matter, which is as follows:

"Jan. 27th, 1890.

"Gen. G. M. Dodge,

No. 1 Broadway, New York.

Dear Sir,—

On account of Col. Blodgett's absence from home, I find that I will not be able to have a consultation with him, until shortly prior to the meeting of the stockholders of the Des Moines Union Railway Company called for February 18, therefore I enclose you a copy of the proposed amendments as they

437 have been prepared by me, and also a copy of a resolution, which I have thought ought to be submitted to and passed by the stockholders after the amendments have been made.

You will observe that these amendments are directed to two purposes, first, to clear up the ambiguity and uncertainty with respect to the amount of stock to be issued on account of the original purchase of the property, second, to enable the Des Moines Union Railway Company to act in all matters without the previous authority of three corporations. I have endeavored to protect the interest of the minority as fully as it is protected in the present articles, that is to say under the amendments as now proposed the Company can not do anything of importance without the affirmative vote of the one quarter of the stock which your road will represent or the vote of one of the directors which you will always be able to control. By this arrangement you will have as effective a negative upon the conduct of the Company exerted directly by your stock, as you now have by requiring the previous formal action of the Des Moines & Northern Railway Company. I have given the matter the most careful attention, and while Mr. Hubbell was at first disposed to oppose the amendments which I have prepared, after a full explanation with him, I believe that he will support them. If this reaches you before he leaves New York, it will be well to talk the matter over with him. In any event give me your ideas as fully as you can, and particularly if you do not expect to be here.

Yours very truly,

(Signed) A. B. CUMMINS."

A. I have examined my letter book covering the date mentioned and I know that the paper that you now hand me
438 is a copy of the letter that I wrote to Gen. Dodge on the 27th of January, 1890.

Int. 15. Referring to the latter part of this letter, the last two or three sentences, I wish you would state whether refreshing your recollection from that, you are able to say positively that this amendment to these articles was not suggested by Mr. F. M. Hubbell but in the first instance was something that he was disposed to oppose?

A. I do not need any memorandum to refresh my memory with regard to the first suggestion in the question. These amendments were not suggested by Mr. Hubbell. They were entirely my own suggestion and came about in the way that I have already related. With regard to Mr. Hubbell's position my recollection is that Mr. Hubbell—conservative then as now, never disposed to move very rapidly into the future—was op-

posed to my proposition, as I thought, without any good reason.

Int. 16. Now we have referred, I believe, to the representatives of the Wabash interests and Gen. Dodge and Mr. Hubbell showing that each of them had knowledge of this matter, of these amendments prior to this meeting of April 8, 1890. I wish you would state whether they represented or included all of the interests there were in this terminal property, so far as you know?

A. So far as I know every interest in the terminal property concurred in and was in favor of the adoption of the amended articles before the meeting was held at which they were adopted. I was not aware of any opposition at all at that time. In fact, I know that they had all consented to it.

Int. 17. The record of the meeting of the Des Moines Union Railway Company at which these articles were adopted which was held April 8, 1890, shows that you offered at that meeting certain preambles and resolutions relative to the issuance of the stock of the Des Moines Union Railway Company. I wish you would state whether prior to this meeting a draft
439 of those preambles and [and] resolutions had been prepared and had been submitted to each of the parties interested and had been assented to?

A. In connection with the proposed amendments I had prepared a resolution or series of resolutions carrying out my general proposition, which had been submitted to all, I believe, who were interested in the matter and was understood to be a part of the thing to be done at the meeting, just as we understood the amendments were to be adopted.

Int. 18. So far as I have been able to ascertain by an examination of the records of the Des Moines Union Railway Company these resolutions first fixed the amount of stock to be issued at four hundred thousand dollars. Do you remember why that amount was adopted?

A. I do not remember who suggested the exact amount of four hundred thousand dollars. I only know that I had suggested that it ought to be a great deal less amount than two million dollars and ought to be an amount that could fairly be said to represent, together with the bonds, the value of the Des Moines Union Railway Company property at the time the Company was organized in 1884.

Int. 19. Now, the record of this meeting of April 8, 1890, to which I have referred, this record being Exhibit # 28 to the stipulation already referred to filed March 23, 1911, shows there were present in person at this meeting Col. How, Mr. Hays, Mr. Hubbell, Mr. Martin, Mr. F. C. Hubbell and yourself, and that Gen. Dodge was represented by Mr. Martin as his proxy, and that Col. Blodgett was represented by Col. How

as his proxy, besides showing the presence of various railway companies by their presidents or vice presidents. During the discussion that preceded this meeting and at this meeting, I wish you would state whether it was suggested by anyone that the Des Moines Union Railway Company was not to acquire the absolute title for this property for which it was issuing this stock and these bonds, but that that title was to remain in somebody else?

A. There was no such suggestion by anybody. On the contrary, everybody there knew the very purpose, or one purpose, for adopting the amended articles of incorporation was to remove all doubt or any doubt on that subject and to abrogate the contract of 1882.

Mr. Minnis: I move to strike out the statement of the witness because if it is competent for the witness to tell what was said by any of the parties, it is incompetent for him to express his conclusion with respect to knowledge on the part of anybody.

Int. 20. The printed bill in this case on page 33—I refer to the amended and substituted bill—alleges that in furtherance of an alleged fraudulent conspiracy the defendants Frederick M. Hubbell and Frederick C. Hubbell caused the following statement to be inserted in the record of the meeting of the stockholders of the Des Moines Union Railway Company held April 8, 1890: "That the Des Moines and St. Louis Railroad Company was present at said meeting by J. F. How, President; that the Des Moines & Northwestern Railway Company, successor to the Des Moines Northwestern Railway Company, was present at said meeting by Frederick M. Hubbell, President, and that the Des Moines and Northern Railroad Company, successor to the St. Louis, Des Moines & Northern Railway Company, was present at said meeting by A. B. Cummins, Vice President, thereby intending to imply and have it appear by said writing in said record book, that said Companies were each of them present as stockholders, at a meeting of the stockholders of said terminal company, held on said date, when in fact and in truth, neither of said railroad companies were present at said meeting as a stockholder, or otherwise, as made to appear in and by said sham or pretended record. But your orators state the truth to be that at the date of said pretended meeting of the stockholders of said terminal company, for the alleged purpose of amending the articles of incorporation of said terminal company, as stated in said pretended record book, no stock of said terminal company had been subscribed for by, or issued to anyone."

Please state whether or not you yourself prepared the record of this meeting of the stockholders of the Des Moines Union Railway Company referred to in the extract which is made from the bill, and if so, at whose suggestion you incorporated in it the references to the persons and the presence of the various railroad companies, and why, and state in this connection whether the said Hubbells or either of them caused said statements to be inserted in said record?

A. I prepared the preambles and resolutions at my own suggestion. I did it because it was the next step to be taken to clear up the matters that I was endeavoring to clear up in the amendments to the articles of incorporation. I recited that these people were present because they were present, and my understanding was that the eight directors and these three companies owned all the capital stock of the Des Moines Union Railway Company. Neither of the Hubbells had anything to do with the preparation of the resolution, nor the incorporation of any part of it, unless it were to furnish me with the information that was necessary in order to draft it. I recall in this connection that between the time that the resolution was passed for the preparation of amendments of the articles and this meeting to which you have just referred, the

Purchasing Committee had sold a portion of the stock of the Des Moines Union Railway Company to Mr. Hubbell, and as I remember, a portion of it to Gen. Dodge. I may be wrong about those dates, but that is my recollection.

Mr. Minnis: I move to strike out that part of the answer wherein the witness states it was understood that the eight directors and these three companies owned all the capital stock of the Des Moines Union Railway Company, because it is a conclusion of the witness and not a statement of a fact; and for the further reason that the stock books of the Des Moines Union show that no certificates of stock had at that time been issued to anybody.

Int. 21. It is alleged in the amended and substituted bill near the bottom of page 34 of the printed bill, as follows: "Your orators further represent and show that neither your orators nor their predecessors have at any time consented to the adoption of said alleged amended articles of incorporation, or ratified them, and that neither of them had any information or knowledge of or with respect to said alleged amended articles of incorporation, until the time said defendants Frederick M. Hubbell and Frederick C. Hubbell set up their claims as hereinafter stated." The reference being to the amended articles of incorporation adopted April 8, 1890. I wish you would state again whether there was anyone at that

time interested in this property in any way who did not have full and complete information as to these matters just referred to to whom you yourself did not give full and complete information as to these amended and substituted articles of incorporation?

Mr. Minnis: Objected to because the answer would be immaterial and not tend to prove or disprove the allegation of the bill read, because the question asks the witness to
443 state what he informed the officers of the Des Moines Union Railway Company. Any information received by the officers of the Des Moines Union Railway Company would not bind or be equivalent of knowledge of the Wabash Railroad Company or its predecessors and the other complainants and its predecessors.

A. All the persons who are recited to have been present upon that occasion had information from me with regard to the articles of incorporation, the amendments to the articles of incorporation, and the resolution to which reference has been made, and in addition to those who were present Col. Blodgett had information of these things from me, and Gen. Dodge had information of these things from me, and my recollection is that Mr. Ashley also had information from me.

Int. 22. It is alleged in the bill in substance that the statement contained in article three of the amended articles of incorporation to the effect that the capital stock of the Company should be issued, two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, was inserted or caused to be inserted by the defendants Hubbell and other confederates, knowing that the said statement was not and could not at the time be true. Please state who put this into this amended article; and if you say you did yourself, state whether or not the Hubbells had anything to do with it?

A. I put these things into the amendments to the articles of incorporation, and so far as any direction from the Hubbells to put them in, I had none. So far as their having knowledge that they were in, I think they had; I know they had, precisely as all the rest had knowledge of the statement or of the recitation; and I got my information from various sources, partly from the Hubbells and partly from the others interested
in the subject. There had been no certificates of shares
444 of stock issued at that time, as I remember it, but my information derived from these various sources was that the Des Moines & St. Louis Railroad Company was originally entitled to a half, and the Des Moines & Northwestern to a quarter, and the St. Louis, Des Moines & Northern to a quar-

ter; this being the outcome of the purchase of the Des Moines & Northwestern from the Purchasing Committee.

Int. 23. The bill goes on to state that the statement that the Purchasing Committee was entitled to two thousand shares of this stock was made for the purpose of concealing the fact that Mr. Hubbell had acquired five hundred of these shares from the Purchasing Committee. In connection with this matter I call your attention to the fact that this same record of the meeting of April 8, 1890, shows that Mr. Hays, who was then I believe the general manager of the Wabash Railroad Company, offered a resolution approving the transfer of these five hundred shares of stock from the Purchasing Committee to F. M. Hubbell. What do you say as to whether in the statement referred to in the articles of incorporation or anything else there was any attempt to conceal this transaction?

A. There was no attempt to conceal the transaction. On the other hand, as far as I am concerned, I made every possible effort that everybody connected with the whole matter should be fully and completely informed and I drew the resolutions as specific as they are and as long as they are in order that there could be no possible controversy about it.

Int. 24. What reason was there for making the first resolution show that the stock was to be issued to the Purchasing Committee and then providing in a subsequent resolution for the transfer of the stock to Mr. Hubbell instead of putting Mr. Hubbell in the first resolution which consummated the purchase?

A. The amendments reciting the ownership of the stock in the Des Moines & St. Louis Railroad Company or the Purchasing Committee, the Des Moines & Northwestern, and the St. Louis, Des Moines & Northern, stated the original condition. There had been no transfer of stock from the Purchasing Committee to Mr. Hubbell. I mean now the fifty thousand dollars of stock which he bought between January and April, 1890. And the amendments provided how the consent or approval of the transfer of the stock should be made; and it seemed to me therefore that it was the proper way to transact the business, that the original condition as it was technically should be stated in the amendments and that then the approval or assent to the transfer should be made. As I remember it, although you have not referred to it, at this same meeting there was a similar resolution passed with reference to the sale of a similar amount of stock to Gen. Dodge. I prepared all these things. I parcelled them out among the members who were present at this meeting to be offered from time to time as we proceeded in the work of reorganizing this Company and every man who was there knew beforehand that all these things were to be done.

Int. 25. I wish you would look at the paper I now hand you, which is as follows:

"Meeting of the Directors of the Des Moines & St. Louis Railroad Company.

Des Moines, Iowa, April 8th, 1890.

The Directors of the Des Moines & St. Louis Railroad Company, met in regular monthly meeting: Present: Jas. F. How, C. M. Hays, A. B. Cummins, F. M. Hubbell, H. N. Priest
446 and George S. Grover. Jas. F. How, presiding.

C. M. Hays offered the following resolution and moved its adoption:

Whereas, the purchasing committee of the Wabash, St. Louis & Pacific Railway Company, has sold to F. M. Hubbell one eighth and to G. M. Dodge one eighth of the stock of the Des Moines Union Railway Company, and

Whereas the entire capital stock of said Company owned by the company, issued as a part of the purchase price thereof has been fixed at \$400,000.,

It Is Therefore Now Resolved that the said sale by the said Purchasing Committee, be and the same is hereby ratified, confirmed and approved by the Des Moines & St. Louis Railroad Company."

State whether that is the original draft which you prepared of the record of the meeting of the directors of the Des Moines & St. Louis Railroad Company held on the same day and relating to the transfer of this same stock. I refer now to the first page only of the papers I handed you.

A. I believe it is. I know that I prepared it. I recognize this particular paper because I had in my office at that time a typewriting machine that had the peculiarity shown in this paper, namely, instead of ordinary Roman letters, script type.

Int. 26. Now the contract under which Mr. Hubbell acquired this stock from the Purchasing Committee contained this provision: "The said Purchasing Committee hereby guarantees the approval by the Des Moines & St. Louis Railroad Company of the transfer of said stock to said Hubbell within sixty days." This contract was dated February 11, 1890. Do you know whether those proceedings by the Des Moines & St. Louis Railroad Company and by the Des Moines Union

Railroad Company for the approval of the transfer of
447 this stock were at the instance of the Purchasing Committee in order to comply with this guaranty, or whether they were suggested in the first instance by Mr. Hubbell?

A. I don't remember. I assume at the joint suggestion of both, although I cannot recall any definite suggestion by either.

Int. 27. I will call your attention to a contract marked Exhibit "A" to the deposition of Albert B. Cummins, dated June 2, 1890, (defendants' exhibit 524) between the Des Moines Union Railway Company and the Chicago, St. Paul & Kansas City Railway Company, and ask you whether you drafted this contract? A. I did.

Int. 28. You notice that the record of the meeting of the directors of the Des Moines Union Railway Company of April 8, 1890, added Mr. Charles M. Hays to a committee composed of F. M. Hubbell and yourself to adjust the controversy between the Des Moines Union Railway Company and the Chicago, St. Paul and Kansas City Railway Company respecting leases for the use of the terminal property. Please state whether the contract just called to your attention was the result of that adjustment? A. It was.

Int. 29. This contract contains various recitations relative to the ownership of the terminal property by the Des Moines Union Railway Company. I wish you would state whether this contract before it was executed was approved by Mr. Hays and what his relations were to the Wabash Railroad Company at that time?

A. It was approved by Mr. Hays. As I remember it, he was the general manager of the Wabash.

Int. 30. At a meeting of the board of directors of the Des Moines Union Railway Company held February 11, 1891, at which you were present, another resolution was passed approving the sale of an additional fifty thousand dollars

448 of stock of the Des Moines Union Railway Company by the Purchasing Committee to F. M. Hubbell and reciting the sale had been ratified by the Des Moines & St. Louis Railroad Company, and on the same day a resolution was adopted by the board of directors of the Des Moines & St. Louis Railroad Company at which you were present approving of this sale. Was there any concealment of anything in connection with this transaction, so far as you know?

A. None whatever. I desire to say here there never was a meeting of the stockholders or the board of directors at which everything done was not fully and completely discussed. I have never known any such careful and continuous scrutiny on the part of everybody as I knew with regard to the conduct of the affairs of the Des Moines Union Railway.

Int. 31. Now, passing to another subject, you remember what we call the ratification contract dated July 31, 1897, which was made between the Des Moines, Northern & Western

Railroad Company, Wabash, St. Louis & Pacific Railroad Company and the Des Moines Union Railway Company relative to this terminal property here?

A. I remember a contract that was made about that time as the outcome of long negotiations for the substitution of a new contract between the tenant companies and the Des Moines Union Railway Company. I don't remember its date.

Int. 32. The contract you refer to is the one set out as Exhibit "R" to the amended and substituted bill, is it not?

(Witness refers to amended and substituted bill).

A. This seems to be a copy of the contract to which I refer. I have no way of testing its accuracy.

Int. 33. Referring to these negotiations, about when did they commence, or when did you first personally do some work in connection with the attempt to agree upon a contract as a substitute for this agreement of May 10, 1889?

449 A. I will have to be referred to some contemporary writing to fix the date. I know the circumstance out of which the attempt arose.

Int. 34. What was that circumstance?

A. First there was in contemplation the enlargement of the Des Moines Union Railway Company property, and particularly the construction of a more suitable railway station. The Purchasing Committee, as I remember it, at that time owned largely the bonds that had been issued by the Des Moines Union Railway Company for the property it acquired. These bonds had not been listed upon the exchange in New York. The eagreement of the tenant companies to pay for the use of the property and for the service of the Des Moines Union Railway Company was the foundation for the value of these bonds. The companies which had signed the contract had all gone out of existence, and the obligation of those companies which had succeeded to the original companies was an inferential or implied obligation, and it seemed to be very essential that a new contract should take the place of the old in order that live, active companies should enter into an agreement to pay the monthly rental or sum for the use of the property and the services rendered by the Des Moines Union Railway Company, and therefore it was proposed to make a new contract.

Int. 35. You may assume that the matter was brought to your attention about the 31st day of December, 1896. Referring to the paper marked Exhibit "R" to your deposition, is that a draft of a proposed agreement you made in connection with these negotiations and early in them?

A. I think it is.

Int. 26. Now, in that contract or draft marked Exhibit "B", (defendants' exhibit 383) when it comes to the matter of what we call usually surplus earnings, there is, I think in 450 section 3 or 4, practically the language of the contract of May 10, 1889. I am right about that, am I not, about the deductions?

A. Section 3 covers the subject you just mentioned.

Int. 37. Is this paper I now hand you, which is marked Exhibit "C" to your deposition, a later draft of this proposed contract made by you?

A. It is another draft of a contract which was proposed to take the place of the contract of 1889. I prepared it. It contains a good many interlineations in my handwriting and there are also some slips attached to it which I prepared.

Int. 38. In this same connection I call your attention to a letter which you wrote to Mr. Hubbell, F. C. Hubbell, as President of the Des Moines Union Railway Company March 13, 1897, as follows:

"Des Moines, Iowa, Mch. 13, 1897.

"F. C. Hubbell, Pres.,
City.

Dear Sir:—

I hand you herewith a new draft of terminal contract. It accords substantially with the former draft, modified by the propositions that I made to Mr. Ramsey during our conferences of a day or two ago. I think it will meet his views in every respect, provided you can agree upon the retention by the Des Moines Co., of the revenue outside of that derived from railway companies as lessees. I have made this point perfectly clear, so that there will be no opportunity for disagreement hereafter. I have provided that so long as the Wabash Company uses the terminals it shall have a representative upon the executive committee; also that the wages and salaries paid to officers and employees shall not be greater than those ordinarily paid for like services in this locality; 451 also that any agent or employe shall be discharged upon the application of the tenant companies for good cause shown. I have also made the same provision with regard to any successor of the Des Moines, Northern & Western R. R. as was contained in the original draft respecting the Wabash R. R. I have left the provision in regard to repairs as it was in the old contract, except that I have added the word "cars"—I regard the language of the old agreement as more definite and certain than that which was proposed by Mr. Ramsey. I have substituted for Section XV a short section which provides that the tenant companies shall not be called

upon to contribute for interest upon bonds hereafter issued unless such bonds were issued by consent.

I think these changes meet Mr. Ramsey's suggestions in all respects save one, and that I have already mentioned.

Yours very truly,

(Signed) A. B. CUMMINS."

Is the draft that has been marked Exhibit "C" to your deposition defendants' exhibit 382 the draft referred to in that letter? A. It is.

Int. 39. Is this letter written by you to Mr. F. C. Hubbell, President, under date of February 24, 1897, a letter written by you to him as President of the Des Moines Union Railway Company about that time, it being as follows:

"Des Moines, Iowa, Feb. 24, 1897.

"F. C. Hubbell, Pres.,
City.

Dear Sir:—

I have your favor of the 22nd inst. with respect to the Des Moines Union contract. I have a telegram from Col. Blodgett asking me to send him a copy of the amended articles of
452 the Company, which will go to-day, and assume that when he has examined them he will reply to my letter in which I pointed out the protection his company would receive through them. When the draft is returned to me do not forget to make the suggestion with regard to putting in the gold clause.

Yours very truly,

(Signed) A. B. CUMMINS."

A. It is a letter I wrote to the President of the Des Moines Union Railway Company about the time it bears date.

Int. 40. This was during these same negotiations?

A. Yes.

At this time, 12: M, by agreement of the parties an adjournment was taken until two o'clock P. M. of this day.

Pursuant to adjournment above noted, at this time, two o'clock P. M. the deposition of Albert B. Cummins was resumed as follows:

Mr. Guernsey:

Int. 41. In this letter of March 13th you say this, among other things, referring to the revenue outside of that derived from railway companies lessees: "I have made this point perfectly clear, so that there will be no opportunity for disagreement hereafter." Will you please read into the record the addition

you made to which you refer in the extract I have read from your letter?

A. It is this: "And it is expressly understood and agreed that none of the revenues of the Des Moines Company whether derived from the rentals, switching service performed or otherwise, except the rentals from other railway companies using said terminals or a portion thereof, shall be deducted
453 for the purpose of ascertaining the fair monthly aggregate."

Int. 42. I will ask you to take Exhibits "D", "E", "F", "G", "H" defendants' Exhibit 384, "I" and defendants Exhibit 385 and "J" to your deposition as they have been marked, and in your own way give us the scope and duration of these negotiations and what the result was.

A. Several years before I prepared the proposed agreement between the Des Moines Union Railway Company and its tenant companies, which has been marked Exhibit "B", a question or dispute arose with regard to certain earnings which were called in that day—I don't know whether that designation is still in use—surplus earnings. It was contended, certainly by the Wabash people, that these earnings should be deducted from the monthly expenses of the Des Moines Union or credited upon the monthly bills which were rendered to the tenant companies, and I think that there had been some action taken by the board of directors on at least two different occasions with regard to these earnings, and I regarded the subject still in controversy so far as the Wabash was concerned, although personally I always took the position that the contract of 1889 gave these earnings absolutely to the Des Moines Union Railway Company. When it was thought advisable for the reason that I have already stated, that there should be a new contract between the tenant companies and the Des Moines Union Railway Company, and I was deputed to prepare the draft of the contract as seen in Exhibit "B", I made no change whatever upon that subject, for it will be observed that section three of the draft to which I have just referred, is identical with a similar provision in the contract of 1889; at least, I do not recall any change. When this was put before the companies that were interested in it, especially before the Wabash, it suggested, as I remember, several

changes, and then the old dispute with regard to what
454 should be done with those surplus earnings came up and Mr. Ramsey, as it seems to me, was then the general manager of the Wabash; at least I seem to identify him with the transaction. He proposed to take up that subject again and somewhere along there I prepared the draft Exhibit "C" which put the matter in the light in which I viewed it from the standpoint of the Des Moines Union Railway Com-

pany and construed what I thought to be the correct interpretation of section three in the original contract. Then Col. Blodgett in correspondence with Mr. Hubbell—

Int. 43. You said construed. What do you refer to as section three of the original contract.

A. I mean section three of the contract of this draft. It is section four in the contract of 1889. It is section three in the drafts that I prepared. As I was saying, Col. Blodgett took up the matter and in a letter which has been marked Exhibit "D" defendants' exhibit 377 to Mr. F. M. Hubbell, presented two alternative substitutes for that section, the first being marked Exhibit "F", defendants' exhibit 378 and marked at the head No. 1; and the second being Exhibit "E", defendants' exhibit 379 and marked at the head No. 2. I had these proposed substitutes under consideration and I made certain interlineations—probably not very material—in the draft submitted by Col. Blodgett, and, as I understand it, with these interlineations, number two was satisfactory to Mr. Hubbell, and I think was also satisfactory to the Wabash. This substitute made a very material change in the section of the old contract which related to the same subject matter. I need not say what that change was, because it is apparent upon the face of the paper itself. Somewhere about this time—the exact date I do not recall—I was in St. Louis with Mr. Hubbell, as I remember it, and the whole matter was discussed pretty fully, and so far as this controversy was concerned, I
455 supposed it had been adjusted.

But then or about then, so far as my recollection goes, or my connection with it is concerned, there arose another controversy. Mr. Ramsey was of the opinion that it would be fairer if certain expenses which were being incurred monthly by the Des Moines Union Railway Company in the operation of its freight department or freight house should be divided, not upon a wheelage basis, but upon a tonnage basis, and in the contract which was prepared, I think in St. Louis—by whom I do not know—the contract substantially as I had prepared it with the substitution of section three as Col. Blodgett had prepared it with my interlineations in that, was put into the form of a contract with the addition that I have just mentioned, namely, an addition relating to the division of the expenses of the freight house, which with your permission I will read: "The cost and expenses of operating and repairing the freight house including the cost of loading and unloading of freight handled at the request of either of the tenant companies herein named, and also the salaries and wages of all agents and servants there employed shall be borne by each of the tenant companies herein named in such proportion as the number of

tons of freight handled for each at said freight house during the period by which such cost and expenses are made up bears to the total number of tons of freight handled for all said tenant companies at said freight house during said period." I have read the extract as it was originally put into the paper that I have before me and have not given any attention to the interlineations that are now in the paper. The two Messrs. Hubbell, representing the Des Moines Northern & Western, believed, or at least claimed—and I have never attempted to determine the justice of the claim—that the provision I have read would be unfair to the Des Moines Northern & Western in comparison with the Wabash, and it is my recollection that this was the classical straw that broke the camel's back and ended any attempt to enter into a new contract. The effort to do it was shortly thereafter—I do not remember just how soon—suspended and then in order to accomplish the purpose I spoke of this morning, namely, to give additional security and standing to the bonds that were outstanding by having a contract that was the obligation of the existing companies, the ratification or confirmatory contract of 1897 was entered into. If I have not answered your question fully, you can point out any other phases of it.

Int. 44. Passing this matter, several of the records of the directors meetings of the Des Moines Union Railway Company where you were present show that the Company resolved to purchase various specific pieces of property. I do not refer to the original purchase, but subsequent purchases. There was one particularly, I think, with which you were intimately connected, the Heath Oatmeal property, where the title was taken in your name as trustee. I wish you would state generally whether in any instance, so far as you know, there was any suggestion that the Company was not to acquire the absolute title to the property?

A. I never heard any suggestion of that kind from anybody.

Int. 45. At several meetings which you attended the record shows reports of the president and superintendent showing the amounts expended for permanent improvements to the property of the Company or for the acquisition of new property and resolutions adopted for the issuance of bonds to reimburse the tenant companies. What do you know as to the practice in this regard and what occasioned it?

A. The Des Moines Union Railway Company had very little capital. I mean by that, money in hand, and as I remember it, when the board authorized the purchase of a property, or authorized the construction of additions to the

property, some of the tenant companies or all of them advanced the money necessary to make the purchase, with the understanding that they would be reimbursed by the issuance of bonds. So far as I remember they always were reimbursed by the issuance of bonds.

Int. 46. I will call your attention to the minutes of a meeting of the board of directors of the Des Moines Northern & Western Railway Company, held October 3, 1893, and to the minutes of an adjourned meeting of the board of directors of that company, held January 29, 1894, and I wish you would state in this connection what knowledge you have as to how F. M. Hubbell & Son acquired from the Des Moines Northern & Western Railroad Company twenty-five hundred shares of the capital stock of the Des Moines Union Railway Company?

A. As I stated in answer to a former question, the Des Moines Northern & Western Railway Company, as well as the company which preceded it, was usually in sore straits for money, and F. M. Hubbell & Son had advanced to the company a large sum of money in order to continue it in operation and to make what improvements were necessary, and this transaction recorded as a meeting of October 3, 1893 was to pledge certain bonds of the Des Moines Union Railway Company which were held by the Company, and its stock in the Des Moines Union Railway Company, to secure the indebtedness thus created.

Int. 47. Were the bonds pledged the bonds of the Des Moines Union or Des Moines Northern & Western?

A. I think the bonds were the Des Moines Union. That is the way I remember it and that is the way it is here.

Mr. Minnis: I object to the witness testifying verbally
458 to what is evidently in writing.

Mr. Guernsey: We will later on offer this record.

Mr. Minnis: You were stating there not from recollection but what you find in the book?

A. If I had not the book before me, all that I would be able to say, would be to secure a large indebtedness from the Des Moines Northern & Western Railway Company to F. M. Hubbell & Son it pledged the stock in the Des Moines Union Railway Company and certain other securities, as I remember, bonds of the Des Moines Union Railway Company. I would not be able to give the date or form or exact amount of indebtedness if the record was not before me.

Answer to Mr. Guernsey's interrogatory continued: You called my attention also to a later meeting which was a meeting at which the Des Moines Union Railway Company

stock which had been pledged to secure this debt was sold to F. M. Hubbell & Son in payment of the debt or portion of it, and as I remember, at the same time—I have not the record before me here—the other securities which had been pledged for the payment of the debt, namely, the bonds were also sold to F. M. Hubbell & Son under the direction and authority of the board of directors.

Int. 48. Now, there is, I believe, contained in every one of these drafts of the proposed contract which was executed, and also in the contract of July 31, 1897, which we call the ratification agreement, which was executed, a statement reciting that F. M. Hubbell & Son was the owner of these twenty-five hundred shares of stock. What was the occasion for putting this into these contracts?

A. In answering that question I can only recur to what
459 I always thought were the very peculiar provisions of the original articles of incorporation, as well as the amendments which involved consent of all parties in interest to the transfer and ownership of stock in this Company, and I do not remember any other reason than to make it clear and specific, so that everybody would know at all times precisely how this stock was held.

Int. 49. Do you remember a contract between the Des Moines Union Railway Company and the Chicago, Great Western Railway Company, dated July 1st, 1896, defendants' exhibit 526 under which the first named company occupied the terminal here until it was succeeded by the Chicago, Great Western Railroad Company?

A. I remember the contract.

Int. 50. That contract contains various recitals as to the ownership of these terminals by the Des Moines Union Railway Company. So far as you know, was any suggestion ever made that these recitals were incorrect or should be changed?

A. I never heard any.

Int. 51. The trust deed given by the Des Moines Union Railway Company to the Central Trust Company, which is Exhibit 23 to the stipulation filed in this case March 23, 1911, was dated in 1887, before the amendment of the articles of incorporation of the Des Moines Union Railway Company by the adoption of the amended and substituted articles. Some resolutions were passed by the stockholders of the Des Moines & Northwestern Railway Company on January 2, 1890, ratifying this trust deed; and like resolutions at or about the same time adopted by the Des Moines & St. Louis Railroad Company and by the Des Moines Northern Railway Company, were they not?

A. I would think the St. Louis, Des Moines & Northern,

Int. 52. At that time, in 1890?

A. Oh, yes; the Des Moines Northern.

460 Int. 53. I wish you would state whether these resolutions were adopted at your suggestion, and if so, why you regarded them as necessary or proper?

A. My recollection is that the original articles of incorporation which were in force in 1887 required the approval of the three companies which owned these three railroads, to the imposition of any charge or mortgage upon the Des Moines Union property. There may have been some other reason, but I don't recall it if there was.

Int. 54. The report of the Des Moines Union Railway Company, filed with the Executive Council, February 14, 1891, under the heading, "General Remarks", contained the following:

"The Des Moines Union Railway Company is simply a representative company, acting as an agency at Des Moines for the Wabash Railroad Company, the Des Moines & Northwestern Ry. Co. and the Des Moines & Northern Railway Company, performing all necessary work for them and charging each road at actual cost its due proportion for the expenses thereby incurred". This Report was verified by you as Vice-President. The Report filed February 16, 1894, for the year 1893, contained under the same heading the following:

"The Des Moines Union Railway Company is the owner of the property hereinbefore described, and in addition to leasing the same to the Wabash Railroad Company, the Des Moines Northern and Western Railway Company, and the Chicago Great Western Railway Company, performs certain services for these Companies and collects from them as rental and for such service the aggregate amount of its expense, which expenses are paid by the several railway companies in proportion to the use of the property and service rendered, as provided by contracts existing between this Company and
461 the said Wabash Railroad Company, Des Moines Northern & Western Railway Company and Chicago Great Western Railway Company". This last mentioned report was also verified by you as Vice-President.

I wish you would state, if you know, why the character of this general statement was changed; how the statement as it first appears came to be inserted in these reports?

A. I had nothing whatever to do with the operation of the Des Moines Union Railway Company; knew nothing about the details of its operation. At the time of the first report to which my attention was called, was presented to me, Mr. Hubbell, F. C. Hubbell, who I think then was President of the Company, was away from Des Moines, and I signed that report without even reading it. I think I ought to apologize to everybody for having done it; but I was a busy man, and

it came up to me in a perfunctory sort of a way, and I did it. When the other came on, in some way or other, I don't remember how it was, my attention was called to that subject, and I myself prepared and put on it, my recollection is, the slip pasted over; anyhow, it was put in as a substitute for the remarks that were in the report as it came to me, and which were probably identical with those contained in the previous report that I had signed.

Int. 65. A stipulation to which reference has been made, contains as a part of Exhibit No. "47" a supplemental mortgage, made October 2nd, 1889, by the St. Louis, Des Moines & Northern Railway Company, which was acknowledged before Mr. James P. Hewitt, and was just before the foreclosure proceedings. In the first place, will you state whether or not this supplemental mortgage was prepared by you?

A. It was.

Int. 66. This refers to all of the interest of the grantors
462 in the obligation or stock in the Des Moines Union Railway Company. Did you at that time understand that the interest of the St. Louis, Des Moines & Northern was in the property of the Des Moines Union?

A. I did not.

Int. 67. Or that it was represented by stock or something of that kind, to be issued?

A. As I understood it, it was represented by stock.

Int. 68. You had to do with the subsequent exhibits here, relating to the foreclosure of this trust deed, and the conveyance of the property to the new Company, the Des Moines & Northern Railway Company, without calling your attention to each one in detail?

A. I had; I foreclosed them all.

Int. 69. Without calling your attention to each one in detail, there are a number of resolutions adopted by the Des Moines & Northwestern Railway Company, and some articles of consolidation adopted by the Des Moines, Northern & Western Railway Company, which led up to the consolidation of the Des Moines Northwestern Railway Company, and the Des Moines & Northern Railway Company, into the Des Moines, Northern & Western Railway Company. Please state whether you had charge of all of these proceedings and prepared all of these resolutions and the articles of consolidation?

A. I had charge of the whole matter and did prepare all the instruments that carried the consolidation into effect.

Int. 70. Throughout this whole proceeding reference is made to the stock of the Des Moines Union Railway Company as a part of the property which was being acquired by the consolidated Company, and so far as I have been able to

learn, there is no reference to the acquisition of any
463 interest in the tangible property, the title to which
stood in the Des Moines Union Railway Company. I
wish you would state whether at this time you believed that
what the two constituent companies owned, and what the con-
solidated company was acquiring, was this capital stock?

Mr. Minnis: We object to what he believed.

A. I did so believe. I knew it was; it wasn't a question of
belief.

Int. 71. Do you remember that in one of the resolutions
there is a provision for the issuance of a certain number of
bonds to General Dodge for some of this stock, and for a cer-
tain number of bonds to Mr. F. M. Hubbell for some of the
stock? A. I remember.

Int. 72. It is alleged in the bill in this case, that the stock
of the Des Moines Union Railway Company never was intend-
ed by any one to be of or represent any value. You, as the rec-
ord shows here, were a director, at least, and sometimes Vice-
President of the St. Louis, Des Moines & Northern Railway
Company, the Des Moines & Northwestern Railway Com-
pany, the Des Moines & Northern Railway Company, the Des
Moines Northern & Western Railway Company, and the Des
Moines Northern & Western Railroad Company, and were con-
nected with the affairs of these Companies from 1889, down
to the time that the property was acquired by the Chicago,
Milwaukee & St. Paul Railway Company. I wish you would
state, whether at any time, either of the companies that I have
mentioned, in any way, so far as you know, assumed the atti-
tude that this stock was not of value, or had not the ordinary
characteristics of the capital stock of the corporation?

A. I never heard any such assumption, or statement or
suggestion from anybody connected with any of these
464 companies. I must distinguish, however, between one
sense of the word value, and another sense of the word
value. From the time I became connected with the Des Moines
Union Railway Company, and familiar with its affairs, I as-
sumed, in common with everybody else, that the Des Moines
Union Railway Company was the absolute owner of the prop-
erty that had been conveyed to it, and that its stock represent-
ed in the hands of those who owned it, whatever value that
property had, subject to its mortgages and its fixed charges.
The value of the stock depended entirely upon the standpoint
from which one looked at the enterprise. It was known
there was a contract outstanding, under which, aside from any
surplus earnings, which in those days were so small as to be
almost negligible, the Des Moines Union Railway Company

could not pay any dividends on this stock until the expiration of that contract. That condition, of course, affected the value in a sense, of the capital stock. But that it held the same relation to this corporation that ordinary stock holds to ordinary corporations, I never heard doubted or questioned, from the beginning to the end. The only difference between the articles of incorporation, and chief difference or characteristics of the amended articles of incorporation were, that it required practically unanimous action on the part of the stockholders and directors in order to do the important business of the company.

Mr. Minnis: I move to strike the answer, because the articles speak for themselves, and show, the original articles set out the contract of 1882, and states the object of the corporation was to carry out that contract; that the amended articles purport to expunge that contract, and various other differences, and if counsel insists upon the witness expressing his
465 opinion deliberately in the record, I shall take the liberty, by means of objections to state my opinions. The articles are different in most every feature of them, according to my view.

Int. 73. Do you remember any conversation, after the Chicago, Milwaukee & St. Paul Railway Company had acquired the Des Moines Northern & Western Railroad Company, with the officials of that company, or any of them, as to the value of this stock, any discussion of it?

A. I remember a great many conversations.

Mr. Hughes: We object to this as calling for incompetent testimony, and conversations with parties who would have no power or authority to bind the Chicago, Milwaukee & St. Paul Railway Company.

Int. 74. State as nearly as you can when the conversations occurred and with whom?

A. I do not remember the year. These conversations began shortly after the Chicago, Milwaukee & St. Paul acquired the interest in the stock of the Des Moines Union Railway Company, and they continued over a period of,—well, two or three or three or four years, and they arose during the attempt on the part of the Des Moines Union Railway Company, of which I was the professional representative, to secure a new contract or lease with the Chicago, Milwaukee & St. Paul Railway, and The Wabash Railroad Company. It is entirely within the limit to say, that I had a dozen conferences with Mr. Earling, who was then at least the president of the Chicago, Milwaukee & St. Paul Railway Company, upon this subject;

part of them in Des Moines, and part of them in Chicago. I also had two or three conferences or more, but less than I had with Mr. Earling, with Mr. Delano, after he became
466 president of the Wabash, and in all of these conversations, one of the subjects discussed, was the value of this stock, because I was proposing or insisting upon a contract which would be based upon payments from these companies, that would enable the Des Moines Union Railway Company to pay dividends upon this stock.

Int. 75. Now, in response to your suggestion of a basis to provide payment of dividends, did either of those gentlemen ever suggest that the stock was never intended to have any value, or shouldn't earn any dividends?

The same objection as last above is interposed on behalf of the defendants.

A. I never heard any such suggestion from either of them. On the contrary, I have heard Mr. Earling say on more than one occasion, that this stock should be owned by railway companies and not by private individuals, and that the thing for Mr. Hubbell to do was to sell his stock and get out of the enterprise entirely, and if I might add, I strongly advised Mr. Hubbell to do it.

Int. 76. I wish you would look at the bundle of papers marked Exhibit "K" to your deposition, and then at the papers marked exhibits "L" and "M", defendants' exhibits 519 to 522 inclusive, and with reference to exhibit "K", is that a copy of the petition and amendment to the petition, in the case of the Des Moines Northern & Western Railroad Company and the Des Moines Union Railway Company, vs. James F. Joy, O. D. Ashley, Thos. F. Hubbard and Edgar T. Wells?

A. I believe that the paper handed me is a copy of the petition which was filed by me or my firm in the suit to which reference has been made, and that the exhibits attached to it are copies of the exhibits that were attached to that petition. I also believe that the copy which purports to be a copy of an amendment to the petition, is a copy of the amendment that was filed by my firm.

Int. 77. Is the paper marked exhibit "L" the answer in that case, and the paper marked exhibit "M" a copy of the judge's opinion.

A. I believe the paper marked exhibit "L" is the original answer, and I believe exhibit "M" is a copy of the opinion of the court in deciding the case. But I am enabled to declare it is a copy only because it seems to convey the same idea to my mind, that the opinion of the court then did, which I thought was very unsound.

Cross-Examination

By J. L. Minnis, Esq.:

C-Int. 1. Senator, when did you become attorney for the Des Moines & St. Louis Railroad Company?

A. I don't remember the year. I only became attorney for the Des Moines & St. Louis in connection with the Wabash; first the Wabash, St. Louis & Pacific, and afterwards, whoever represented the Wabash interests at St. Louis. My recollection is, however, that it was two or three years before these occurrences.

C-Int. 2. Was it about the time the line was built?

A. No, sir.

C-Int. 3. Was it subsequent? A. Subsequent.

C-Int. 4. How many years subsequently?

A. I don't remember. Of course, an examination of our old books would disclose that.

C-Int. 5. Had the terminal properties been constructed here at that time?

A. Yes; that is to say, they had been partially constructed; not in their present condition, of course.

C-Int. 6. You were also attorney for the companies, predecessors in title to the Chicago, Milwaukee & St. Paul, were you not?

A. Yes, I became attorney for the Des Moines & Northwestern, oh, I would think, in 1888, possibly.

C-Int. 7. Mr. Hubbell was the active officer of those companies, was he not?

A. Mr. F. M. Hubbell was the active man in connection with the Des Moines & Northwestern, and afterwards, Mr. F. C. Hubbell, who was for a period general manager and superintendent of that Company.

468 C-Int. 8. Was Mr. F. M. Hubbell, Sr., connected with the Wabash or Des Moines & St. Louis?

A. I don't know; but my understanding always was, that he was only connected with the Wabash—first, in possibly being a director in the Des Moines & St. Louis at the time it was constructed, and afterwards being one of the purchasers from the Purchasing Committee of the Des Moines & Northwestern. I don't think he was connected with the Wabash in any other way.

C-Int. 9. Are you familiar with the contract of date, January 2, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company?

A. I am.

C-Int. 10. Did you draft that contract?

A. I did not. I was in no wise connected with any of these interests in 1882.

C-Int. 11. When you came in as counsel for any of these parties, they were operating and developing the terminals under that contract, were they not?

A. When I became connected with the Des Moines Union Railway Company, it was operating, so far as its paper authority is concerned, under the articles of incorporation of 1884, which incorporated the contract of 1882.

C-Int. 12. And the articles also stated that the business and purpose of the corporation was to carry out that contract?

A. I remember very well, there is that provision in the articles of incorporation.

C-Int. 13. It was the purpose of those parties, when you first were retained as counsel, to develop these properties in the interest of the railway companies, in order that they might economically handle their business, was it not?

469 A. I don't think so. That was the purpose when the contract of 1882 was made, evidently. I only know of the purpose by my familiarity with the contract itself. But I don't think that it was the purpose of the Des Moines Union Railway Company when I first became connected with it, to develop the property for the benefit or interest of the railroad companies, except as they would be benefited by the increase in the value of their stock holdings.

C-Int. 14. When you became counsel in any of these lines, there was no one interested in the projects, except the railroad companies, was there?

A. I think not, if you include the Purchasing Committee as within the term, railroad. I am not sure whether at that time there had been any negotiations; whether I knew of any negotiations between Mr. Hubbell and the Committee for the purchase of that stock or not.

C-Int. 15. That was later?

A. That purchase was made in 1890, about a year after I became a director in the Des Moines Union, and counsel for that company.

C-Int. 16. As I understand, there was nobody interested in that project, except the railroad companies, at the time you became counsel? A. I didn't know of anybody.

C-Int. 17. Senator, you will agree that it was to the interests of those companies to continue to use that property at the expense of its operations, don't you?

A. I couldn't affirm that proposition. If you will allow me, I will tell you just how it came to me.

C-Int. 18. If you will answer, my question, Senator, we will get along; I want you to have it all your way.

A. I simply want to be fully understood in the matter, because, in a sense, what I did, is under investigation, and I

am anxious that those who are interested in the subject matter shall understand precisely what I did and why I did it.

C-Int. 19. Senator, if you state that in your judgment, it is not to the interests of the several lines entering the City to have joint terminals, and to operate them simply at the expense of operation, please state your reasons for the opinion to the contrary?

A. I do not believe that the joint use, joint occupation of terminals in a city of any magnitude, doing very much business, is feasible at all. It was the original idea, evidently, that these three companies should jointly own and jointly use these terminals, and before I came into it—as I came into it, it was apparent that all the people interested in it had reached the conclusion, that these terminals ought to be made terminals for the whole city of Des Moines—a union depot; in other words; and it was the hope, and I heard it expressed often times, that every railroad in Des Moines could be brought into these terminals under a contract, paying for their use to the Des Moines Union Railway Company. That was the radical departure which had been made in this company, and the expectations of those interested in it, between the time the contract of 1882 was made, and the time I became connected with it.

C-Int. 20. Well, if new lines would be admitted, it would still be to the advantage of all the lines to operate the terminals at a common expense?

A. It would be to the interest of all the lines to have the terminals operated at the least possible expense, so far as they had to contribute to that expense.

C-Int. 21. Your position is, not that it would be to the interest of companies to pay, not only the expenses, but a high rental to some outside party for the use of the terminals?

471 A. Under certain circumstances, yes.

C-Int. 22. What circumstances?

A. The circumstances were these: Originally they expected to be joint owners of this property. Before I came into it, they had abandoned that entirely, and expected to be represented through the capital stock, and anything that would increase the capital stock, would be equivalent to the higher rentals of the Des Moines Union Company.

C-Int. 23. I am asking you now, whether you consider it to the interests of the railway companies to have common terminals, and operate those terminals at cost?

A. Abstractly, yes, of course.

C-Int. 24. Now, this contract of 1882, section 4, provides with respect to the property, that it was to be acquired for ter-

minal purposes, and that the title to said property shall be and remain in a trustee to be named by agreement of said companies, but subject to the joint use and occupation of all said railway companies, upon the terms herein described. The 6th paragraph, without reading all of it, in substance provides, that the expense of operating the property shall be borne between the three companies, in accordance with the use—and the expense thereof shall be borne between it and the other two companies, which is evidenced by the wheelage. The companies were using the property on that basis, were they not, when you came into their affairs? A. No.

C-Int. 25. They were paying each, their proportion of the common expense of operating the property? A. Yes.

C-Int. 26. They were? A. Yes.

C-Int. 27. Now, when was it that any outside party,
472 that is, any person besides the railway companies acquired any interest in the stock of the Des Moines Union Railway Company?

A. As I remember it, it was somewhere along the first of the year, 1890.

C-Int. 28. Were you also counsel for Mr. F. M. Hubbell?

A. I was.

C-Int. 29. I will ask you if, when Mr. Hubbell began negotiations for the purchase of stock, wasn't the first time that anybody outside of the railway companies undertook to acquire any stock in the Des Moines terminals?

A. As far as I know.

C-Int. 30. Did you advise Mr. Hubbell with respect to the negotiations for the purchase of that stock? A. I did not.

C-Int. 31. Did you continue to act as counsel for the Wabash Company and for Mr. Hubbell personally after he acquired that stock? A. Yes, sir.

C-Int. 32. You were counsel for both companies, were you, for both Mr. Hubbell and the Wabash Company?

A. I was local attorney for the Wabash Company and counsel for Mr. Hubbell.

C-Int. 33. Was there any other legal counsel of the Wabash Company in Des Moines besides yourself?

A. I do not know; I think not.

C-Int. 34. You had charge of the Wabash Company's legal matters here, did you not?

A. Under the direction of Col. Blodgett, yes.

C-Int. 35. Col. Blodgett usually deferred to you, did he not, in handling legal matters in Des Moines?

A. Not after I became counsel for the Des Moines Union Railway Company, and when acting in its behalf. Col. Blodgett, I assume, exercised his own judgment in regard to the re-

lations the Purchasing Committee and the Wabash would
473 sustain to the Des Moines Union Railway Company. At
least, I never did anything without full consultation
with him.

C-Int. 36. Did Col. Blodgett have any knowledge that you
were counsel for F. M. Hubbell? A. Yes, sir.

C-Int. 37. Senator, did you think it would be to the ad-
vantage of these companies for Mr. Hubbell to acquire stock
in the Des Moines terminal?

A. I never considered the question.

C-Int. 38. At that time Mr. Hubbell was the active man-
ager of the predecessor of the Chicago, Milwaukee & St. Paul,
was he not? A. I think he was its president.

C-Int. 39. When was it with respect to the time that Mr.
Hubbell purchased this stock that you suggested that the ar-
ticles of association should be amended?

A. I suggested that months before I knew that Mr. Hubbell
was negotiating for any stock, or that he had any idea of buy-
ing any part of the stock, as I now recall it. I don't know that
Mr. Hubbell was engaged in buying the stock or attempting
to buy the stock from the Purchasing Committee until after
the resolution had been passed with regard to the amendments
to the articles of incorporation.

C-Int. 40. Senator, you spoke a moment ago about admit-
ting other companies and making a general terminal for all
companies. I will call your attention to the tenth article of
the contract of 1882, and I will ask you if that article did not
provide for the admission? I will read it.

"In the event that any Company, whose railroad does not
extend to Des Moines, shall effect an arrangement for run-
ning its trains into Des Moines over the railroad of either
of the parties hereto, such company shall be entitled to
474 the use of all of said terminal facilities upon the pay-
ment of a fair sum for rental and its proportion of the
maintenance account, the rental to enure to the companies
hereto in the same proportion as the original outlay, and the
sum due from such companies for maintenance account, to be
determined in the same manner as the sums due from the other
Companies, parties hereto. Railroad companies whose roads
extend to Des Moines, may be admitted to the use of said fa-
cilities by agreement of all the companies parties hereto." It
provides upon the agreement of those companies named here,
that other companies may be admitted to the use of the ter-
minals? A. Yes.

C-Int. 41. Well, then these three companies under that con-
tract were at liberty to admit all companies that came to Des
Moines to the use of the terminals?

A. On such terms, yes, and not upon stockholding terms.

C-Int. 42. But they were at Liberty to admit all other companies, were they not?

A. They were at liberty to make contracts with other companies for the common use of the terminals, yes.

C-Int. 43. Now, Senator, referring back to the fourth article of that contract of 1882, what do you understand that article to mean—this language to mean: "The title to said property shall be and remain in a trustee to be named by agreement of said companies"?

A. I understand it to have meant just exactly what it says.

C-Int. 44. That is, that the property was to be held in trust by a trustee?

A. That was my understanding of it; that is my understanding of that language.

475 C-Int. 45. What did you understand by the language which follows: But subject to the joint use and occupation of all of said Railway Companies upon the terms herein described?

A. I understand that means precisely what it says. Here was certain common property, which each of those companies could use to run their engines over—

C-Int. 46. In other words, Senator, the right of a railroad company to use property is defined in law as an easement?

A. Yes. I don't think it could be said every right of a railroad to use property is an easement.

C-Int. 47. But a right is here referred to, to use property and run their trains over it; isn't that an easement in law?

A. That would be an easement.

C-Int. 48. Now isn't the word subject, following the words of conveyance equivalent to burdened with?

A. I do not dissent from that construction. I see no difference between the use of the word subject and burden in that connection.

C-Int. 49. Then the trustee was to hold the title, burdened with an easement, in favor of the railway companies, under that clause.

A. Yes; this contemplated a naked title in the trustee, with the joint use by the beneficial owners, with a police control in the hands of the Des Moines & St. Louis Railroad Company.

C-Int. 50. This title held by the trustee was subject to this use; is that your understanding?

A. My understanding is that the title was a mere naked title; the property belonged to these three companies under that contract, and each of the companies was entitled to a common or joint use of their common property.

C-Int. 51. Now, to get at what I want: Suppose you
476 were to convey forty acres of land, and state in the deed
that the conveyance was made subject to the right of
way of a railroad over the land, do you understand you would
convey the right of way of the railroad, or would you convey
your interest, the entire interest except the right of way?

A. I would say it conveyed my interest.

C-Int. 52. If you said subject to the right of way—

A. That is to say, the grantee takes the same title the
grantor had, subject to the easement of the railway company
over the property.

C-Int. 53. Just the same as though you would take a special
deed of trust? A. Yes.

C-Int. 54. Now, that being true, the trustee under this
clause took the title as trustee, burdened with the right of
these companies to use the property for railroad purposes, did
he not?

A. I wouldn't express it that way. The trustee was a
mere naked holder of the title, and the property itself be-
longed to the three railroad companies, and this agreement is
simply to provide that they shall have a joint, common use of
their own property.

C-Int. 55. Still, Senator, if the title to the property vested
in the trustee, subject to the easement, then the trustee never
took the easement at all, did he? A. No.

C-Int. 56. That remained in the companies?

A. I do not discriminate between the easement and the
property itself; the companies owned the property itself with
the naked title in the hands of some other person.

C-Int. 57. But the title to the right to use was reserved
by the companies, that still remained with them; it was not in
the trust at all?

477 A. Oh, I think there was nothing in the trust but
the title, and the ownership of the property was in the
companies, and this statement here, subject to the joint use
and occupation of all said railroad companies, means simply
that these three railroad companies, being the owners now
of this property, agree between themselves that they shall have
the joint use and occupation of it.

C-Int. 58. And the conveyance to the Trustee, was, you
understand, subject to that right?

A. Yes, I think it can be said, subject to that right, or
subject to the beneficial interests in the property, substantial
ownership of the property as well.

C-Int. 59. Don't all the law books recognize there may be
such an interest in property as an easement?

A. Certainly. If this property were being conveyed to a
grantee who was to take a substantial interest in it, then
your interpretation would be entirely accurate; that is, he

would take subject to this easement; but when the trustee takes nothing but a mere legal or naked title, I cannot discriminate between the beneficial and substantial ownership of the property of these railway companies and the easement.

C-Int. 60. Senator, if they had said merely that the title should be placed in the hands of a trustee, then we would have had the situation as you now describe it; would we not?

A. Practically.

C-Int. 61. The language, subject to the joint use and occupation of all of said railway companies upon the terms herein described, indicates that the trustee took whatever title he took burdened with the right of these companies to use the property?

A. In my view, the trustee did not take anything at all, except the legal naked title.

C-Int. 62. How much did Mr. Hubbell give for his stock?

A. To whom?

C-Int. 63. To the Purchasing Committee?

A. I don't know.

C-Int. 64. Wasn't it about 10%?

A. If I ever knew, I have entirely forgotten. I didn't conduct the negotiation, wasn't present when the sale was made and I knew nothing about it. I suppose I knew at [at] the time, but I have no recollection now what he paid for it.

C-Int. 65. What was the property of the Company worth at the time he bought that stock?

A. To answer that question, of course, I must express my opinion. But there was a good deal of discussion about it when the articles were amended, and this resolution to which reference was made was passed. I came to the conclusion that I would be willing to see the property go in at the amount of the bonds and \$400,000. of stock. I thought that was a fair value of the property at that time.

C-Int. 66. Can you state that in dollars and cents?

A. Well, it runs in the neighborhood of \$800,000.

C-Int. 67. And the mortgage was how much?

A. Well, my recollection is, there were then, that the bonds then outstanding amounted to somewhere about \$375,000.

C-Int. 68. That would leave an equity in the property worth about \$425,000.

A. If you will allow me to refresh my memory, I can tell you exactly what I thought at the time. The sum then fixed, which represented my opinion at the time was \$861,257.21 I desire to state, upon reference to this resolution, I find there were 461 bonds outstanding.

179 C-Int. 69. What would be your judgment of the value of the property above the mortgage?

A. I thought about \$400,000; that is, I thought it would stand \$400,000 without creating any liability upon the part of those who held it to make good for unpaid stock if the Company should get into trouble and fall into the hands of a receiver.

C-Int. 70. Would you think the equity was worth about \$400,000?

A. Yes, my answer stands as given a moment ago. Of course, I understand it couldn't have been sold for \$400,000 at that time; for a period of many years there was no possibility of paying a dividend.

C-Int. 71. Do you think it was a good trade to sell Mr. Hubbell $\frac{1}{8}$ interest in that equity, for say, \$10,000 or \$12,000?

A. I do not know what the exigencies of the Purchasing Committee were. If anybody had asked me my view of what it would be at that time, I would have unhesitatingly said the stock was worth more than the sum you name.

C-Int. 72. The contract of January 2nd, 1882 was in force at the time Mr. Hubbell made his purchase?

A. I don't think it was in the respect which you have in mind.

C-Int. 73. Had the articles been amended then?

A. As I said in my direct examination, I looked upon them and do now, as being inconsistent with the contract of 1882.

C-Int. 74. I did not ask you that question.

A. You asked if the contract was in force; I do not think it was.

C-Int. 75. Had it been abrogated?

A. As far as I know, it had never been abrogated, except as in the original articles themselves, or the amendment which had been made, possibly three years later, increasing 480 the capital stock to two million dollars.

C-Int. 76. Assuming that it remained in force until the articles were amended, assuming that, at the time Mr. Hubbell purchased the stock of the Purchasing Committee, the stock could not have represented any value at that time, would it?

A. Well, that is a pretty difficult legal inquiry. That would depend entirely on whether Mr. Hubbell, having purchased a part of the stock of the Purchasing Committee, became one of the beneficiaries in the trust provided for in the contract. If he took a pro tanto share of that trust, why, of course, what he purchased would be valuable, just as the stock was valuable.

C-Int. 77. I thought we agreed that the trust was made subject to the easement in the railroads?

A. But the Purchasing Committee was one of the beneficiaries in the trust, and if the Purchasing Committee sold to Mr. Hubbell a part of its benefit under the trust, what he bought would be valuable, if the property itself was valuable.

C-Int. 78. Assuming now that all the title—that the title the trustee took was relieved of the trust, and that the trustee had the whole title to all that he took as trustee, still, what he would then have would be subject or burdened with the rights of these railroad companies to use this property?

A. The question never came up at all. I repeat, that the Purchasing Committee being a beneficiary in the trust, if it sold a part of its property to Mr. Hubbell, I would be inclined to say that in equity he would be entitled to share in the property, although I do not assert that as the result of any reflection upon the subject.

C-Int. 79. How could he share, as the property, according to your construction, was to be jointly used?

A. Because the Purchasing Committee would be compelled to respond to Mr. Hubbell for that beneficial share it received from the use of the property.

C-Int. 80. If Mr. Hubbell took the shares with notice of the contract, he would take whatever the shares gave him?

A. I have expressed my opinion upon that subject.

C-Int. 81. Now, Senator, isn't it a fact, after Mr. Hubbell got hold of this stock, that you then concluded, as his counsel, that it would be to his interest to so amend the articles as to vest the whole title to the property in the Company?

A. It is not a fact.

C-Int. 82. But it is a fact, if your construction of the amendments is proper, that the amendments did vest in the Company the whole title to the property, is it not?

A. The whole title to the property had been vested in the Company before the amendments, but the contract of 1882, together with the fact of what had been done prior to my coming in, created a cloud on the title—uncertainty, if you please, with regard to it—and one of the objects of these amendments was to make absolutely sure that the contract of 1882 was abrogated and that the Des Moines Union Railway Company should be the absolute owner of this property and that the interests were to be represented solely in stock.

C-Int. 83. Well, the Wabash Company wasn't interested in clearing up the cloud, was it?

A. I don't know from what standpoint the Wabash Company looked at it; I only know that every view I held upon the matter was fully disclosed to everybody connected with it.

C-Int. 84. Did you ever disclose to anybody, or did you ever hear anybody discuss or say that the railroad companies after

the amendment of the articles would not have the right to use this property at the common expense of its use and operation?

A. I answer that question by saying, that the right of
482 the railroad companies to use this property was fully set forth in the contract Col. Blodgett drew, which was signed in 1889, before I had anything more than a nominal connection with it, and my understanding was that their rights to the use of this property—I am not speaking of their rights to the stock—their rights to the use of the property were entirely contained in the contract of 1889.

C-Int. 85. My question was, did you say to anybody, or did you hear anybody say, that after the amendments these companies would not have the right to use these terminals at cost?

A. I don't remember of ever hearing an expression put into that form. The whole purport of it was, to make the Des Moines Union Railway Company an independent corporation, that could contract with these tenant companies, or any other companies that might be admitted.

C-Int. 86. According to your construction of the amendments, they were to clear up the situation and to show that the Des Moines Union Terminal owned the property, and that the companies would not after the expiration of the contract of 1889, have the right to use the same at cost?

A. I have not stated that in those terms, because that question was not discussed. I had stated to all these people what the effect of the present situation was—of what had been done was; and, of course, the moment the trust was obliterated, and the absolute title to the property was fixed in the Des Moines Union, as I understood everybody agreed at that time, the right of these tenant companies to use this property after the expiration of the contract of 1889 ceased absolutely, unless another contract were made.

C-Int. 87. You never stated that to anybody?

A. I don't remember ever stating it in that way, but
483 there are a great many things that are assumed. I may have stated it in just that way; I don't recall.

C-Int. 88. Well, Senator, if we assume that the railroad companies had the right to use the property perpetually under the contract of 1882, at cost, you will not say that the Wabash Railroad Company knowingly intended to surrender that right, and thereby vest in Mr. Hubbell an equivalent of $\frac{1}{8}$ interest in that property, will you?

A. You are asking me to express my opinion upon what the Wabash Company would have done under conditions which did not exist, and it is impossible for me to say what the Wabash Company would have done.

C-Int. 89. You say the contract of 1882, was not in force, up, at least, until the amendment to the articles?

A. In my opinion, it was not in force, so far as the title to this property is concerned and the ownership of the Des Moines Union Railway.

C-Int. 90. You were of the opinion they owned it all the while?

A. I was of that opinion then, and I haven't considered it since.

C-Int. 91. If it be true that the articles were amended upon that supposition, and that supposition was erroneous, then the amendments were based upon a mistake, were they not?

A. Again, you know you are asking an opinion upon a state of facts, which, so far as I know, did not exist.

C-Int. 92. Senator, I have to assume facts. I want to get at your views; I have some views as to what these things amount to; if you don't answer my questions when I assume, and then only in accordance with your own assumption, we cannot make much headway.

A. If you ask my opinion as a matter of law on the question, I will give it to you with great diffidence. I haven't practiced law for ten years. If you will repeat that question I will endeavor to answer it.

484 (C-Int. 91 repeated)

A. Yes, if anybody supposed that the amendments to the articles of incorporation did not proceed upon the hypothesis that the absolute title to all this property was to be in the Des Moines Union Railway Company, he proceeded upon that mistake.

C-Int. 93. I am speaking at the time the amendments were made; you have said, in your opinion, the Des Moines Union owned the whole title at all times; now I ask you—

A. I didn't so state.

C-Int. 94. You said, the contract of 1882, you thought was destroyed by the articles of incorporation?

A. In part. The contract of 1882 was made two years prior to the incorporation of the Des Moines Union Railway Company, and it was my opinion then, and it is now, that that part of the contract which contemplated the title in the trustee and the joint use and occupation of this property by these three companies under the police control and supervision of the Des Moines & St. Louis Railroad Company was abrogated in the original articles of incorporation; but there still remained what every lawyer understands, and you will understand, as a doubt with regard to the effect of those articles and the conduct of the Company under them during the period of 1884 to 1889. The company, it seemed to me, was

proceeding upon the theory that it was the owner of this property and had absolute control of it, except as governed by its directors, and I proceeded to act upon the situation as it then existed, and with the full knowledge and understanding of everybody interested.

C-Int. 95. The amended articles were adopted upon the assumption that the Des Moines Union at that time held title to the property, were they not? A. Yes.

485 C-Int. 96. Now, Senator, if we assume that until the adoption of the amended articles the contract of 1882 was in effect, and that the amended articles abrogated and destroyed that contract, then Mr. Hubbell, by the amended articles became entitled to the proportion that his share acquired from the Purchasing Committee bore to all the shares of the value of the Des Moines Company, did he not?

A. No.

C-Int. 97. What, on that assumption, what would he have acquired by the amended articles?

A. Mr. Hubbell acquired by the amended articles precisely what every other stockholder acquired, the right to manage the corporation in the way set out in the amended articles, and his share of the value of the property as represented in his stock, and every other stockholder acquired exactly the same right and privilege.

C-Int. 98. Well, I asked you though, Senator, my question, on the assumption that the contract of 1882, was in effect until the amended articles were adopted?

A. I recur to what I said a few moments ago. Mr. Hubbell's individual interest was not in contemplation, or within my knowledge, and I did not know it existed at the time the work began on these amended articles, and if the amended articles had not been adopted, and if it be assumed that the contract of 1882 was in full force and effect, then, in my judgment, Mr. Hubbell would have acquired from the Purchasing Committee the proportion of the beneficial interest in this property, that the \$50,000 stock which he bought, bore to the entire amount of stock at any time outstanding.

C-Int. 99. But if it be true that the stock was of no value prior to the amended articles, then Mr. Hubbell did
486 acquire considerable value by the amended articles, did he not?

A. I don't fully understand the import of that question.

C-Int. 100. It is this: I am putting my theory into the question—assuming that the stock sold by the Purchasing Committee to Mr. Hubbell, did not entitle Mr. Hubbell directly or indirectly to claim any interest in the property of the Des Moines Union Company, and that the amended articles vested all the title to the property in the company, in the Des Moines

Union Company, the amended articles did give to Mr. Hubbell stock of great value that it didn't before have?

A. Unquestionably it gave value, upon the assumption you state.

C-Int. 101. On that assumption, would the Wabash Company get any return by the amended articles?

A. Do you mean any return for the purchase of the stock of the Purchasing Committee, or do you mean what general benefit accrued to the Wabash Company through the amendment?

C-Int. 102. I will explain it. On my assumption, the stock at the time it was purchased by Mr. Hubbell from the Purchasing Committee, had no value and did not represent any interest in the property of the Des Moines Union, the property being owned by the three companies. Now, if the amended articles vested in the Des Moines Union the whole title to the property, and took that title away from the railroad companies, then Mr. Hubbell's gain by the amended articles would have represented the Wabash Company's loss by the amended articles? A. I don't think so.

C-Int. 103. Why not?

A. Upon the assumptions you have stated, which of course, I must assume in answering the question, although it is difficult for me to do it,—the gain to the Wabash would have been a workable corporation for the operation of these terminals, and an opportunity for the Purchasing Committee of the Wabash St. Louis & Pacific to sell the stock or interest it had to some advantage, which without it it could only sell in connection with the sale of the Des Moines & St. Louis Railroad Company.

C-Int. 104. Do you understand the Wabash Railroad Company would ever, under any circumstances, sell its right to use the Des Moines terminals, unless it sold the railroad?

A. No, I understand that it intended to preserve $\frac{1}{8}$, at least, of the capital stock, which gave it in the amended articles an influential voice in the affairs of the Company with respect to many things—a veto upon anything that was proposed, and that when the Des Moines & St. Louis Railroad was sold $\frac{1}{8}$ of the capital stock was to go with it.

C-Int. 105. If the contract of 1882 was in effect until the articles were amended, the Wabash Company had at least a third interest in the property, did it not?

A. It had a one-half interest in the property, under the assumption of the contract of 1882, assuming that things just remained in that form until it sold a one-quarter interest, being $\frac{1}{8}$ to Mr. Hubbell, and one-eighth to General Dodge.

C-Int. 106. So that if the contract of 1882 remained in effect under the amended articles, until the articles were amended

ed, and the Wabash Company up to that time had one-half interest in all the property, did it not?

A. That is the way I understood it; under the original arrangement it had one-half interest in the property.

Mr. Guernsey: I think it ought to be understood that the Wabash Company and the Purchasing Committee, are terms used indiscriminately.

488 C-Int. 107. If the amended articles for the first time vested the whole title of the property in the Des Moines Union Terminal, the Wabash thereafter only had a $\frac{1}{8}$ interest, did it not?

A. As I understand it, taking into account the sale of stock to Mr. Huddell and General Dodge, the Wabash or Purchasing Committee had at the conclusion of these proceedings a one-quarter interest.

C-Int. 108. Did you understand that the effect of striking out of the original articles of incorporation the contract of January 2nd, 1882, by the amended articles, had any effect on the title to the terminal property?

A. I thought it had the effect of removing a cloud from the title.

C-Int. 109. You regarded it as a mere cloud?

A. And preventing disputes.

C-Int. 110. You regarded that as merely a cloud?

A. Yes; in view of the provisions of the original articles, the first amendment to the articles, and the conveyances to the Des Moines Union and the conduct of the Company, I regarded it as a mere cloud upon the title.

C-Int. 111. It was not the intention of anybody, was it, Senator, to radically affect in any way the relationship of the different parties to the terminal property by the amended articles?

A. That had been effected before. The purpose of the amended articles in that respect was simply to give effect to what everybody, as I understood it, had agreed upon before, namely, that the interests in this property were to be represented by stock, and not by ownership.

C-Int. 112. That was only agreed at the time of the amended articles, was it not?

489 A. I don't know when it was agreed; it seemed to be the whole atmosphere of the Company in all the meetings.

C-Int. 113. Did anybody understand that by the amended articles the relationship of any of the interested parties to the Terminal Property would be substantially or radically changed, by the amended articles?

A. As compared with the contract of 1882, yes; everybody understood it.

C-Int. 114. What did they understand the change would be?

A. They understood the change would be that the interests of these companies, or the interests in the property that remained after the mortgage, would be represented by stock, and not by ownership. They understood that the management of the property would be in the Des Moines Union Railway Company, without any other supervision than the supervision of the board of directors of that Company. They understood that all payments for the use of the property were to be made to the Des Moines Union Railway Company, and not the Des Moines & St. Louis Railroad Company.

C-Int. 115. Still, Senator, I understood you to say, you thought the contract of 1882 was abrogated by the articles?

A. In some respects. Do you want me to point out why I thought so?

C-Int. 116. I will not burden you with that now; I want to get it clear into my mind. I understood it was your opinion, notwithstanding the contract of 1882 in the articles, the whole title of the property vested at that time in the Des Moines Union?

A. No; I stated, notwithstanding the contract of 1882, by the original articles, by the first amendment to these articles, and by the conveyances that had been made to the Des
490 Moines Union, and by the conduct of the companies themselves, and of all the persons interested, that part of the contract of 1882 that provided that the title to this property should be vested in a trustee, and that the Des Moines & St. Louis should have supervision over it, had been abrogated.

C-Int. 117. Now, I understand your position, that all these things together did result in vesting the whole title in the property to the Des Moines Union? A. Precisely.

C-Int. 118. Those things all occurred prior to the adoption of the amended articles?

A. All but the last had occurred, and the last was occurring every day.

C-Int. 119. What was that?

A. Namely, the management of the property by the Des Moines Union Railway Company.

C-Int. 120. But all the deeds had been delivered, and all contracts and everything of that kind, upon which you relied to show that the Des Moines terminal had acquired the whole title, had been executed and delivered before the amended articles?

A. I don't remember that all the conveyances had been made to the Des Moines Union, but the bulk of them had been made. Aside from that, all these things had occurred before the amended articles came in.

C-Int. 121. So that at the time the amended articles were amended, you regarded merely the contract of 1882 as a cloud?

A. I regarded it as a cloud. I looked at it, that in some future time, upon inspection of these records, these contracts and articles, it might be claimed this property was in the hands of a trustee, or was held by the Des Moines Union Railway Company as a trustee.

491 C-Int. 122. It was understood, as you know, by all the parties, that the supposed striking out of the original articles the contract of 1882 by the amended articles, was merely to clear up that cloud?

A. I cannot recall any distinct and separate conversation upon that point, for as I told you, everybody acted upon that hypothesis. I do not remember any objection made by anybody to that phase of the matter.

C-Int. 123. Then, I understand, Senator, that aside from removing the cloud, you did not understand that the amended articles affected the title to the terminal property?

A. It was my opinion that the title was in the Des Moines Union, and I intended that these amended articles should make it absolutely sure and beyond any future controversy.

C-Int. 124. But you did not intend to otherwise affect the title; that you say was not discussed?

A. I do not remember any specific discussion upon that question. You know, I had stated all these things to these people—the difficulties in their articles of incorporation, in their preceding history—and I was proceeding to carry out what I understood to be the unanimous desire of all these people. Mr. Hubbell was the only man among all of them who objected to this proposition.

C-Int. 125. I do not see why he would object, because on any theory he was benefited. I could see every reason why the Wabash Railroad should have objected, if I had any conception at all of its rights at the time. But now, Senator, I understand you advised those parties and that you did it honestly, but we do not agree with your conclusions of law.

A. They have often been different from, and sometimes successfully.

492 C-Int. 126. I have confidence in your judgment, but we differ from it, and that is why we have a law suit on hand. What I wish to do is to get your knowledge of the situation?

A. I have not a particle of interest in the law suit, but I have an interest in the allegation that is made, that substan-

tially charges me with having committed a fraud upon these people.

C-Int. 127. I didn't know your name was mentioned in the bill?

A. My name is not mentioned in the bill, but I did those things which it is alleged in the bill constitute a fraud upon the people interested in this property. I never did anything more openly, more specifically and more carefully in all my life than I did these things.

C-Int. 128. Was there any discussion in connection with the amendment of the articles in respect to whether the companies would in the future have the right to use the property of the Des Moines Union?

A. You mean, after the expiration of the contract of 1889?

C-Int. 129. Yes?

A. I don't recall any discussion of that question, because it was obvious. Any person who would read these papers and amendments, would know their rights would terminate at the expiration of that contract, and then there would be a new contract made, if possible; if not, they would have to cease the use of this property.

C-Int. 130. Of course, you had examined all these things; you had it in mind, and that is why I am asking you what these other people discussed.

A. I don't recall any specific discussion on that subject. Col. Blodgett would probably better remember than I; he drew the contract of 1889.

493 C-Int. 131. Senator, you verified the report made by the Des Moines Union to the Council of State, in the year 1890, wherein you state that the Des Moines Union Railway Company is a representative Company, acting as an agency at Des Moines, for the Wabash Railroad Company, the Des Moines Northwestern Railway Company and the Des Moines Northern Railway Company, performing all necessary work for them and charging each at actual cost its due proportion of the expenses thereby incurred. I understand you did, but didn't read the report?

A. Yes, sir, I acknowledge that with some humiliation. I remember the occasion very well when the auditor of this company brought it in.

C-Int. 132. But I find that in the report of the previous year, for the year ending December 31, 1889, Horace Seely, General Superintendent of the Company verified the report, and that report contained precisely the same language. I ask you, whether as counsel of the Des Moines Union you were not called upon by Mr. Seely to prepare a statement with respect to the nature of the Des Moines Union, in order that he might incorporate it in his report? A. No.

C-Int. 133. What other attorney was consulted by the officials of the Des Moines Union at that time?

A. I don't know; I don't believe anybody was; for that I cannot speak.

C-Int. 134. You were the counsel of the Company?

A. I was vice-president of the Company.

C-Int. 135. You cannot undertake to state from memory every conversation you had every time you gave advice, can you, to the officers?

A. No, sir; I do not pretend to do it. I remember
494 the chief transactions of the Company, but not the details.

C-Int. 136. If this statement which is contained in the report of 1889, and the one you signed for the year 1890, correctly describes the Des Moines Union Railway Company, the amended articles did radically change the relationship of the interested parties to the terminal property, did it not?

A. I repeat. In my opinion, the change had been effected before.

C-Int. 137. I ask you this question: Assuming that the reports I have referred to properly describe the nature of the Des Moines Union Railway Company, didn't the amended articles, in your judgment, radically change the relationship of the interested parties to the Terminal property?

A. If it be assumed that the Des Moines Union Railway Company up to the time of the amendments of the articles was a mere agency for these railroad companies, then the amendments did radically change the situation.

C-Int. 138. You will appreciate that I have to assume some of these facts? A. Oh, yes, I understand that.

C-Int. 139. The report made to the Council of State by the Des Moines Union for the year 1892, was signed by F. C. Hubbell, President of the Company, and Horace Seely, Superintendent, and that report contains the same statement with respect to the nature of the Des Moines Union Railway Company. A. I do not recall those dates.

C-Int. 140. Do you remember signing one February 28, 1893?

A. I don't remember the dates of any of them. I remember that on two or more occasions I signed the annual report of this Company to the executive council, in the absence of Mr. Hubbell, the president.

C-Int. 141. Why, was it, Senator, when you signed the
495 report for the following year, that you placed in lieu of the former general remarks, the statement that the Des Moines Union is the owner of the property hereinbefore described, etc.

A. These reports, as I remember it—I don't remember how many of them were brought into my office. If you know

what the reports are; they are voluminous, composed of large sheets of paper and many of them. And I remember, on one occasion, I would not have known whether the first or the last, my attention was in some way called, or I caught that statement, and I knew that wasn't true.

C-Int. 142. Did you dictate the statement?

A. My recollection is I did.

C-Int. 143. The one in 1894?

A. I don't remember the year, but the circumstance.

C-Int. 144. You knew these reports were important and had to be verified by oath? A. I did.

C-Int. 145. You must have read them?

A. I did not read them. They contained a great number of statements and statistics of which I knew nothing whatsoever.

C-Int. 146. Do you know who did first insert the statement that I read a while ago, in these reports? A. I do not.

C-Int. 147. You don't recall of being called upon on that signed about the year 1889?

A. I don't remember ever being called upon to advise with regard to those annual reports. They are made on blanks furnished by the executive council, and they are prepared usually by the auditing department of the Company that makes them.

✓C-Int. 148. Now, you stated in your direct examination that the Des Moines Union Railway Company was ignorant the contract of 1882 with respect to the title to the property and also in the management of the property.

A. Yes, sir.

C-Int. 149. In what way was it ignored?

A. What I stated, if I remember correctly, is that the provisions in the contract of 1882 with regard to the ownership of the property, it was ignored. They were ignored, first, in the conveyances that had been made to the Des Moines Union Railway Company by Mr. How, and Mr. How, Trustee, by General Dodge, and I think possibly by the Des Moines & St. Louis. I am not sure it held title to a part of the property, but I think it did. These provisions were ignored in the payment to the Wabash road and to General Dodge, for the original purchase price of the property. The Des Moines Union Railway Company had issued its bonds and with those bonds it had paid the persons who originally advanced the money to buy its property.

C-Int. 150. Wasn't that in accordance with the contract of 1882? A. I think not.

C-Int. 151. In what other respect was it ignored?

A. I think it was ignored by entirely dispossessing the Des Moines & St. Louis Railroad Company from the supervision

and control of this property. It was managed absolutely by the Des Moines Union Railway Company. There had ceased to be any common use or occupation of the property. That was true originally; at the time I am mentioning, the Des Moines Union Railway Company was transacting the business through these terminals; it was taking the freight trains of these tenant companies and was disposing of these freight trains, in part, at least, unless they were going through. Although I can not recall the exact detail of it, at any rate,

497 the Des Moines Union Railway Company was using this property, and the tenant companies were paying every month the sums which the contract of 1889 provided should be paid for the services rendered by the Des Moines Company and the use of the property. In all these respects, the original idea that this property was to be held as a naked trust for the use and benefit of these three companies, and that the Des Moines & St. Louis was to be the manager or supervisor of the joint use, had been ignored and abandoned; the business was not done in that way at all.

C-Int. 152. That contract of 1882 provided that a terminal company might be formed?

A. It provided that a depot company might be formed, that should have charge of the property.

C-Int. 153. Management, didn't it say?

A. I think it used the word management. That a depot company may be organized and take permanent charge of the property; that is in the contract, upon the terms herein set forth.

C-Int. 154. The Des Moines Union was afterwards organized, and it stated in the articles of association organizing that company, that its business was to carry out that contract, isn't that true?

A. You have stated it with reasonable accuracy, but in order to be entirely accurate, I would rather read one of the preambles to the articles, which reads this way: Whereas, it was provided in the contract aforesaid that a depot company might be organized to take permanent charge of the property and it was the understanding of the parties that such company might acquire, operate and maintain the said property in such manner as best serves the interests of the parties thereto. I

498 may remark in that connection, that the use of the words, "it was the understanding that such company might acquire, operate and maintain said property", indicated to me that understanding wasn't an understanding in the terms of the contract of 1882.

C-Int. 155. What section did you read from?

A. From the preamble that precedes article 1 of the articles.

C-Int. 156. It states, the understanding was; that would indicate, they were interpreting what they meant by the former contract?

A. It indicated to me there was an understanding between these parties that was not contained in the contract of 1882, because there is no such provision in the contract of 1882.

C-Int. 157. Well, that was their construction of it, I would say; but be that as it may, the company was organized with that recital in its articles, was it not; the recital that you have read?

A. It was organized with that as one of the preambles; precisely as the contract was one of the preambles.

C-Int. 158. And the contract is set out? A. Yes.

C-Int. 159. Now, the Des Moines Union Company did manage the property in the manner set out in the articles, did it not, it operated the property?

A. No, it operated the property itself.

C-Int. 160. It itself operated the property?

A. The joint owners contemplated in the contract did not operate the property or use it.

C-Int. 161. But the Des Moines terminal did operate it for them?

A. I would say it operated it for itself.

499 C-Int. 162. Whose cars did it haul?

A. The cars that were brought in by the Wabash, by the Des Moines & Northwestern, and by the St. Louis, Des Moines & Northern.

C-Int. 163. It certainly pulled those cars for those companies? A. Yes.

C-Int. 164. Did you see it doing anything else than pulling cars for these railroad companies?

A. You mean, so far as its operation of the tracks is concerned?

C-Int. 165. Yes.

A. No. I saw it enlarging its tracks; I saw it acquiring new property; I saw it trying to reach new industries all the while; I saw it, of course, serving the predecessor of the Chicago Great Western Railway Company; which was not in this arrangement originally.

Mr. Hughes: What was there detrimental in doing these things?

A. I don't think there was anything detrimental to anybody. On the contrary, I thought it was doing its business properly, but its business did not seem to me to be in har-

mony with the original articles, if the contract of 1882 was to be considered.

C-Int. 166. You are not familiar as to how the terminals are managed in the various cities of the United States, such as Chicago, St. Louis and Kansas City?

A. Well, I was for 23 or 24 years attorney for a good many railroad companies. I have had a good deal of negotiation with various people about this company, and I became somewhat familiar with the management of terminal companies.

C-Int. 167. But from the fact, Senator, that all these other companies, terminal companies, like the Terminal Railroad Association of St. Louis, and in Chicago, and the Kansas City Union Depot Company, are all mere agents for the proprietary companies and handling the business the same way as this one does here, I assume, from my knowledge of these companies, that you are not acquainted with the situation, because that is the only way I have any knowledge of handling the terminal business?

A. I think you are right about that. That is the reason the contract of 1882 was absolutely unworkable.

C-Int. 168. There is no contract to be found that has not the features of the contract of 1882. Other terminals, such as in Chicago, St. Louis and the Kansas City Union Depot Company, they all give to the proprietary lines the use for that and the company is merely an agency. It does operate and push cars and keeps their accounts and bills on them for their expenses.

The defendants object to the question as being testimony as to the way this business is transacted.

C-Int. 169. Senator, in what way did the deeds made by How to others ignore the Des Moines Union Terminal?

A. I have not examined these conveyances for 20 years or something like that. I do not recall what they contained. I only know that my recollection is that there was not in these conveyances the terms which one would naturally have expected if it had been intended to make the Des Moines Union Railway Company the naked holder of the title to this property. You can have recourse to those deeds and determine for yourself whether my recollection in that respect is accurate or not.

C-Int. 170. The deeds state, do they not, that the property is conveyed to the Des Moines Union pursuant to the contract?

A. I think there is a recitation in some of the deeds of the circumstances under which Mr. How, and possibly Mr.

Dodge acquired that title, but my recollection is that
 501 they are not conveyed to the Des Moines Union Railway Company in trust to hold for these three companies. You know better than I whether my recollection is right.

C-Int. 171. Don't you know as a lawyer that a conveyance may be absolute in the party to whom it is made, either through the issuance of a declaration of trust or receive his title under contract which makes a trustee, that he holds as Trustee.

A. I know the general principle of law to which you refer; but the Des Moines Union Railway never did issue a declaration of trust and had undoubtedly paid for this property full price, and I never heard of that in connection with any conveyance of a naked trust.

C-Int. 172. Now, here is what the deed of Mr. James F. How, Trustee, to the Des Moines Union recites: Whereas, certain property was conveyed to me in trust, and whereas, it was acquired and held for the purpose and upon the terms set forth in a certain contract made and entered into about the 2nd day of January, 1882, between the Des Moines & St. Louis Railway Company,—and then goes on and recites the other companies—you will find that recital near the top of page 33 of the bill. A. Yes.

C-Int. 172. In the second paragraph you will find the further recital: It was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions? A. I see that.

C-Int. 173. Can you mention, Senator, any other acts whereby the Des Moines Union was ignored?

502 A. Following the suggestion you just made about the deed from James F. How, Trustee, to the Des Moines Union Railway Company, it will be remembered that after the contract of 1882 was made, and before this deed was made, the original articles had been adopted, and it was recited in those articles that the Des Moines Union Railway Company might acquire, operate and maintain said property in such manner as best served the interests of the parties thereto. And you will remember the second article provided: The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in and around and about the City of Des Moines; and then that article 3 provides, that the capital stock of this corporation shall be one million dollars, divided into shares of one hundred dollars each, and the Board authorized to receive in payment therefor the property and franchises in the City of Des Moines; then when it is remembered, that the Des Moines Union Railway Company had paid to the persons advancing this money,

the purchase price in their bonds, I do not believe you would differ with me very much in assuming that this deed conveyed the property to the Des Moines Union Railway Company absolutely, and not as the trustee named in paragraph 4 of the contract, which says: The title to said property shall be and remain in the trustee to be named by agreement of said companies.

C-Int. 174. I won't agree to that. Senator, you ignore the vitality of the contract of 1882 in saying that the Des Moines terminal was ignored, do you not?

A. I mean that the Des Moines Union Railway Company and those who made it up had ignored the contract of 1882.

503 C-Int. 175. Who paid the expenses of the Des Moines Union Terminal at that time? A. In 1889?

C-Int. 176. Yes, along there?

A. If you mean now, the period before the admission of the Chicago, St. Paul & Kansas City, afterwards the Chicago, Great Western—

C-Int. 177. Well, the companies using the property paid the expenses?

A. The companies using the property and for which the Des Moines Union Company rendered its service, paid for that service and that use, in proportion to the wheelage of each of those companies over the property.

C-Int. 178. Who complained of the Des Moines Union Company being ignored?

A. Nobody. There was no basis for any complaint; everybody was agreed on what ought to be done.

C-Int. 179. There was no complaint about it?

A. I never heard any.

C-Int. 180. There has been no change, since the amendment of the article in the manner of operation?

A. I could not answer that broadly, no, although I think it can be said, the management and operation have continued practically since that time as before, with the admission of new companies and new contracts, and other things modifying the rights of the several parties.

C-Int. 181. Did you know of the contract of May 10, 1889, when you suggested that the articles be amended?

A. Oh, yes.

Col. Blodgett:

C-Int. 182. Governor, was it your understanding at the time, or is it your understanding now, that any clause inserted or any clause stricken out of the articles at the time they

were amended, had any effect on the title to the terminal
 504 property or upon the right of the several railroad companies to the permanent use of the property, on the terms stated in the contract of January 2, 1882, and if so, will you state, what clause inserted, or what clause stricken out had that effect?

Objected to on the part of defendants as assuming that this right under the contract of 1882 was existing at that time.

A. I can't answer the question categorically. I can only say, in my opinion, as it was then, and as it is now, the Des Moines Union Railway Company was, in January, 1890, the absolute owner of the property of which it was in possession, and that the only interest which these railroad companies or their successors, or assignees or grantees had in it was a stock interest; that is, interest in the stock of the corporation which owned it. However, I realized then as I realize now, that there were ambiguities, uncertainties in the prior records and proceedings of the corporation and various parts that made it up, and just exactly as I would file a bill to quiet the title to property upon which I might think there was a cloud, which however could not be sustained, I proposed these amendments to the articles of incorporation, to clear up all those doubts and uncertainties.

C-Int. 183. Did you understand that would have an effect upon the disputed title, those amendments?

A. Yes, in this sense: If the dispute had arisen, then I believe the Des Moines Union Railway Company could have maintained its absolute title to this property, and the tenant railroad companies would have been held to have no other interest except their interest in the stock of that company. But
 505 as I said before, if my opinion upon that subject was unsound, then the amendments to the articles of incorporation removed all question about it.

C-Int. 184. What article in the amendment, what clause in the amended articles, would you say had an effect on the title or the right of the railroad companies to use the property?

A. The first article, in my opinion, that would have that effect, if I am wrong in regard to the construction of the preceding contracts and articles and transactions, is article 3, which provides: "The capital stock of the corporation shall be two million dollars (\$2,000,000) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred

thousand dollars, together with the first mortgage bonds heretofore issued for that purpose, constituted the fair value of said property when so acquired; and all resolutions and proceedings of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught. Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions:"

I need not read further, because I have already indicated what section would affect that question. Second: I think that article 4 would contribute to that effect, wherein it states: "The board of directors shall have the power to authorize the execution of mortgages, to issue bonds, to enter into contracts, to purchase property, to construct buildings, to make leases, to authorize the institution of condemnation proceedings, and to do all such other things as may be proper or necessary for the corporation to do."

I think that article 15 would contribute to the result, namely: "The proceedings of a meeting held December 10th, 1884, with certain preambles, including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as a part of the Articles of Incorporation of this Company, are hereby repealed, stricken out and expunged."

C-Int. 185. Assuming that the railroad companies had an estate in the property or interest in it, or right to use it before these articles were amended, would those articles to which you have referred, in your opinion, have deprived them of that right.

A. Except in so far as they were entitled to right under the contract of 1889, and except in so far as they protected their rights through their ownership of stock.

C-Int. 186. Then you think resolutions passed or amendments adopted by the board of directors or stockholders of the Des Moines Union Railway Company, would affect the interest or estate of the railroad companies in the terminal property, do you?

A. Assuming that it had not been done before, it would have affected the rights of these railroad companies, because each of these railroad companies joined in the amendment of these articles and assented to what was done.

507 Mr. Minnis:

C-Int. 187. By what act?

A. By their votes as stockholders in the Des Moines Union Railway Company.

C-Int. 188. Did the Wabash Railroad Company pass any resolutions or authorize anybody to act for you?

A. I never inquired with regard to the preliminaries, I acted upon the assumption that Mr. Hays and Mr. Blodgett had authority to do what they were purporting to do.

C-Int. 189. You were acting as an officer of the Des Moines Union Railway Company, were you not?

A. You mean, I individually?

C-Int. 190. Yes, as director?

A. I was acting as a director of the Des Moines Union Railway Company. However, the act of the directors did not amend those articles of incorporation; they were amended by the acts of the stockholders.

Mr. Blodgett:

C-Int. 191. I understand you exactly, if all the stockholders of the Des Moines Union were there, and for instance, we will say that the Des Moines & St. Louis had an estate or interest in the terminal, assuming that it did, that the Des Moines Northwestern had an interest, and the Des Moines Northern & Western had an interest, and they owned all the stock, and they went there and voted for these amendments, that would change or effect the estate which their respective companies had in the Terminal?

A. I don't want to express an opinion as to what the effect was. It is sufficient to say, if the amended articles of incorporation had any effect whatever, so far as these companies were concerned, it was given effect by their participation as stockholders in the amendments. I do not know now
 508 of any authority given. I was not general advisor of the Des Moines & St. Louis or Purchasing Committee or Wabash.

Mr. Hughes: You were a stockholder of the Des Moines Union?

A. Only in this sense: It was assumed I held one share of stock, which belonged to the Wabash Railroad Company or the Purchasing Committee, to qualify me as a Director.

C-Int. 192. They transferred that to you to qualify you as a Director?

A. My recollection is there had been no certificates of shares of stock issued until this general clearing up in April, 1890, and that immediately following that, the stock book was opened, and those individual shares were issued to the persons who were to be qualified as directors, and the remainder to the persons and corporations named in the resolution.

Mr. Blodgett: Would you say now, governor, would you understand that if a corporation owned this property, and Mr. Guernsey owned all of the stock of that corporation, that he owned the property; if we should sit down and make a deed to A. B. it would pass that title, do you?

A. I did not assert that. I do not exactly understand you.

C-Int. 192. You say here people were stockholders in the Des Moines Union, and the companies of which they were officers had stock in the Des Moines Union; now they went there and attended a meeting and voted, and now that vote would not have any greater effect than if they had sat down to sign their name to a paper, releasing the interest that their respective companies had in the property; I mean the terminal property of the Union Terminal Company.

A. My opinion was then and is still, that if the Des Moines & St. Louis Railroad Company, treating it now as a going concern, and the Des Moines and Northwestern Railway Company, and the St. Louis Des Moines & Northern Railroad Company, owned jointly certain property, and if they 309 had consented to transfer all that property to a corporation, and if they had consented to receive bonds and stocks as the purchase price of their interest in that property, through their participation as stockholders in the corporation, that that would surrender any interest that either of the companies might have in the property itself.

Excused.

510 In the Circuit Court of the United States, Southern District of Iowa, Central Division.

Chicago, Milwaukee & St. Paul Railway Company, and Wabash Railroad Company, Complainants,

vs.

Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son, Defendants.

Notary's Certificate.

I, J. P. Blaise, a Notary Public in and for Polk County, Iowa, hereby certify:

That pursuant to the stipulation hereinbefore set forth, I caused to come before me at Des Moines, Polk County, Iowa, on the 23rd day of March, 1911, the witness Albert B. Cummins.

That said witness was then and there duly sworn by me, and his testimony taken down in short hand by me. That thereafter I transcribed said short hand notes into longhand, and

that the translation of my said short hand notes so taken, is a full, true and complete translation thereof.

Witness my hand and official seal hereto affixed, this 3d day of April, A. D. 1911.

Notary Public, in and for Polk County, Iowa.

511

Deposition of Joseph Ramsey, Jr., Filed April 22, 1911.

512 Deposition of Mr. Joseph Ramsey, Jr., Taken by Agreement Before George A. Kues, Notary Public, New York County, New York, on April 19, 1911, at No. 42 Broadway, New York City.

Present: Col. Wells H. Blodgett and James L. Minnis, solicitors for Complainants, and N. T. Guernsey, solicitor for defendants.

It is hereby stipulated that the deposition of Mr. Joseph Ramsey, Jr., may be taken by agreement at the time and place aforesaid before the said George A. Kues, Notary Public, as aforesaid, the said deposition to be taken in shorthand by

Mr. H. E. Blanchard and to be by him transcribed and
513 certified to be an accurate and correct transcript of the testimony of the said witness, and when so transcribed and certified to be returned by the said notary as the deposition of the said witness.

Mr. Joseph Ramsey, Jr., being duly sworn as a witness on behalf of the defendants testified as follows:

Direct Examination

1. Q. Give the notary your name and address.

A. Joseph Ramsey, Jr., Residence, No. 157 Raymond Avenue, South Orange, N. J.

2. Q. You were at one time connected with the Wabash Railroad Company, one of the complainants?

A. I was—from December 1, 1895, to October, 1905.

3. Q. Your first connection was in what capacity, what offices did you hold?

A. I was Vice President and General Manager until 1901, when I was elected President.

4. Q. And you continued to be President until—

A. Until our annual meeting October, 1905.

5. Q. While you were with the Company and before you were elected President, that is, while you were Vice
514 President, who was President of the Wabash Railroad Company? A. Ossian D. Ashley, New York City.

6. Q. During the time that you were connected with the Wabash Railroad Company, or about the same period, were you one of the directors of the defendant, the Des Moines Union Railway Company?

A. I was from a short time after my going with the Wabash until I left it in 1905.

7. Q. During that period from 1895 until 1905 was your office in St. Louis? A. It was.

8. Q. During that period who had charge of the transactions between the Wabash Railroad Company and the Des Moines Union Railway Company?

A. I practically had charge of all the operative matters—attended the meetings of the board of directors, etc.

9. Q. There are set out here as exhibits to the bill a contract made between the Des Moines Union Railway Company, the Des Moines & St. Louis Railway Company, the Des Moines Northern & Western Railroad Company and the St. Louis & Northern Railway Company, dated May 10, 1899, relating to

the use of the terminal property in Des Moines, this contract being marked "Exhibit P." and also a contract

which is dated July 31, 1897, between the Des Moines Union Railway Company, the Wabash Railroad Company and the Des Moines Northern & Western Railroad Company, called "an agreement of ratification and confirmation," confirming with a few slight modifications the agreement of May 10, 1889. Were you during the period that you were connected with the Wabash Railroad Company familiar with these contracts?

A. Yes, I was familiar with them in the general terms and also with the new contract that was entered into after the 1889 contract.

10. Q. By the new contract you mean the one that I referred to, dated July 31, 1897, which is Exhibit R to the bill, I presume. That is the ratification agreement.

A. Yes, I am familiar with that, that is, it is the one I had reference to.

11. Q. Now, Mr. Ramsey, I wish you would state whether at the time you were president, or at the time you were vice-president, of The Wabash Railroad Company, so far as you know, you or anyone else claimed in behalf of that Company any right to the use of the terminals of the Des Moines Union Railway Company in Des Moines, except the rights conferred by these contracts that have been referred to.

516 Objection by Mr. Minnis: I object to that for the reason that it is immaterial and would not tend to negative any of the allegations of the complaint or support any of the

allegations of the answer, and besides the testimony of the witness would be incompetent to disprove the rights of the Wabash Railroad Company and the St. Paul Company which are fixed by contracts.

A. I have no recollection of any such question being directly raised.

12. Q. Have you any recollection of any claim being made to any rights during that period other than the rights that were given by these contracts?

A. Well, there were some questions up between myself and the Des Moines Union Railway Company, that is, Mr. Hubbell, president, as to the right of the companies to the distribution of surplus and so on, and which was questioned by them but asserted on the part of the Wabash, but the actual use of the properties, as far as I remember it, was governed by the contract so far as I understood it.

13. Q. By that you mean the contracts that have been referred to?

A. Yes, the operative contracts referred to.

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Cross-Examination

14. Q. You say, Mr. Ramsey, that no question was ever raised with respect to the extent of the Wabash Company's rights to the use of the tracks of the Des Moines terminals?

A. As to the extent of their rights, I don't quite understand what you mean. We always claimed full rights to the use of the properties jointly with the other lines as per contract of 1889.

15. Q. Was there any question ever raised with respect as to whether the Wabash would have the right to use the tracks of the Des Moines terminal, independently of the two contracts referred to.

A. I can't say as to whether that question was ever raised or not. Of course, we claimed the absolute right to use them in accordance with the conditions of operating and maintaining the property, as set forth under the contract.

16. Q. You found the contract of 1889 in force when you went with the property? A. Yes sir.

17. Q. Did you hear either of the defendants, the Hubbells, at any time set up a claim that the Wabash would not have the right to use that property after the expiration of the contract of 1889?

518 A. I never heard any such claim set up.

18. Q. Were the rights of the properties with respect to the use of the Des Moines property after the expira-

tion of that contract ever discussed during the time you were connected with the Company?

A. The only discussion that I remember in regard to that was when it was proposed that the Great Western should come in under a contract covering a period of fifty years, and I objected to that on the ground that it would give to the Chicago & Great Western Company superior rights to those of the Wabash and the so-called tenant lines at that time, and we had considerable correspondence regarding that, and I think that was what led up to the ratification contract so-called.

19. Q. But no one set up any claim or discussed the question with respect to whether the Wabash would have the right to use the properties of the Des Moines terminals after the contract of 1889?

A. I have no recollection of any such question being raised.

Redirect Examination

20. Q. The questions that were discussed, so far as you recollect, were discussed by correspondence?

A. Principally, yes. Of course we met frequently at St. Louis, Des Moines and some times in New York. The
519 principal arguments were made in correspondence, that is my recollection of it.

JOSEPH RAMSEY, JR.

I, H. B. Blanchard, hereby certify that on the 19th day of April, 1911, I took in shorthand the deposition of Mr. Joseph Ramsey, Jr., in the above entitled cause, taken before George Fues, Notary Public, for New York County, New York, and that the foregoing is a full, true, correct and accurate transcript of the said deposition as so taken by me in shorthand.

Witness my hand on this 20th day of April, A. D. 1911.

H. B. BLANCHARD.

State of New York,

County of New York—ss.

I, George A. Kues, hereby certify that I am a Notary Public in and for New York County, New York, and that on the 19th day of April, 1911, at eleven o'clock A. M. there appeared before me at No. 42 Broadway, New York City, Mr. Joseph Ramsey, Jr., who was by me first duly sworn and who thereupon gave his deposition in the above entitled cause, the said

520 deposition being taken in shorthand by H. B. Blanchard and transcribed by him, and that the foregoing transcript of the said deposition is now returned by me as the deposition of the said witness, pursuant to the stipulation of the parties.

Witness my hand and notarial seal on this 20th day of April, 1911.

(Notarial Seal)

GEORGE A. KUES,
Notary Public, New York County.